United States Court of Appeals

for the Second Circuit

APPENDIX

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United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 75-1004

UNITED STATES OF AMERICA,
Appellee,

v.

ANTHONY M. NATELLI, and
JOSEPH SCANSAROLI,
Defendants-Appellants.

JOINT APPENDIX
VOLUME III
Trial Testimony, Pages 707 to 1470

MARTIN, OBERMAIER & MORVILLO
1290 Avenue of the Americas
New York, New York 10019

HUGHES, HUBBARD & REED
1660 L Street, N. W.
Washington, D.C. 20036

Attorneys for Defendant-Appellant
Anthony M. Natelli

MORRISON, PAUL, STILLMAN & BEILEY
110 East 59th Street
New York, New York 10022

Attorneys for Defendant-Appellant
Joseph Scansaroli

HON. PAUL CURRAN
United States Attorney
Attorney for Appellee
United States Court House
Foley Square
New York, New York 10007

UNITED STATES COURT OF APPEALS
FILED
APR 3 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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INDEX*

	Page
Docket Entries	A1
Indictment	A12
Notice of Motion of Defendants Natelli and Scansaroli	A37
Affidavit of Richard O. Arther in Support of Motion	A40
Opinion #40725 Denying Defendants' Pre-Trial Motions	A46
Government's Bill of Particulars with Letter Amendment	A69
Hearing of August 20, 1974 Re Change of Plea (Kelly)	A105
Hearing of August 20, 1974 Re Change of Plea (Randell)	A117
Government's Requests to Charge	A133
Government's Supplemental Request to Charge, No. 1	A177
Government's Supplemental Request to Charge, No. 2	A184
Natelli's Requests to Charge and Contentions	A186
Natelli's Supplemental Requests to Charge	A209
Scansaroli's Requests to Charge	A211
Scansaroli's Supplemental Requests to Charge	A244
Transcript December 20, 1974	A248
Minutes of Sentence (Natelli)	A273
Minutes of Sentence (Scansaroli)	A289
Minutes of Sentence (Randell, Kelly and Bushnell)	A293
Minutes of Sentence (Kurek)	A326
Judgment of Conviction of Defendant Natelli	A332

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* Exhibits indexed in Exhibit Volume.

Index

	Page
Judgment of Conviction of Defendant Scansaroli	A333
Notice of Appeal of Defendant Natelli	A334
Notice of Appeal of Defendant Scansaroli	A335
Excerpts from Trial Testimony	1
Government's Opening Statement	30
Defendants' Opening Statements	81
Scansaroli's Grand Jury Testimony Read into Record	879
Natelli's Grand Jury Testimony Read into Record	886
Defendant Natelli's Motion to Dismiss	1318
Denial of Defendant Natelli's Motion to Dismiss	1321
Defendant Scansaroli's Motion to Dismiss	1334
Defendant Natelli's Renewed Motion for Judgment of Acquittal	2129
Denial of Defendant Natelli's Renewed Motion for Judgment of Acquittal	2130
Further Motion to Dismiss	2131
Denial of Motion to Dismiss	2133
Defendant Scansaroli's Motion for Judgment of Acquittal	2133
Denial of Defendant Scansaroli's Motion for Judgment of Acquittal	2136
Requests to Charge	2137
Government's Summation	2264
Charge of the Court	2324
Exceptions to Charge	2382

Index

Page

Verdict..... 2430

Minutes under Seal..... 2437

INDEX TO WITNESSES

GOVERNMENT'S:

BERNARD KUREK

Direct..... 134

Cross..... 291

Redirect..... 562

Recross..... 616

JOHN BUCK

Direct..... 631

Cross..... 656

Redirect..... 685

Recross..... 693

Re-redirect..... 694

DOUGLAS HOWARD OBERLANDER

Direct..... 707

Cross..... 772

Redirect..... 827

Recross..... 842

ROBERT J. O'CONNER

Direct..... 845

Index to Witnessee

Page

GOVERNMENT'S (Continued):

JOHN T. JOHNSTON

Direct..... 893

Cross..... 938

JOHN WHARTON

Direct..... 981

Cross..... 991

Redirect..... 994

Recross..... 1001

ARTHUR FROMMER

Direct..... 1014

Cross..... 1024

Redirect..... 1031

LOUIS F. SCHAUER

Direct..... 1031

Cross..... 1061

Redirect..... 1075

Recross..... 1078

JOHN HENEGHAN

Direct..... 1080

Cross..... 1090

Redirect..... 1094

ROBERT C. BALL

Direct (Voir Dire)..... 1101

Cross (Voir Dire)..... 1108

Direct..... 1145

Index to Witnesses

Page

GOVERNMENT'S (Continued):

ROBERT C. BALL (Continued)

Cross..... 1150

Redirect..... 1154

IAN DINGWALL

Direct..... 1155

Cross..... 1229

Redirect..... 1300

Recross..... 1345

DEFENDANTS':

CAROL RAIMONDO

Direct..... 1381

Cross..... 1392

JOSEPH O. HEARNE

Direct..... 1400

Cross..... 1405

ARNOLD BERMAN

Direct..... 1410

Cross..... 1416

VICTOR EARLE

Direct..... 1425

Cross..... 1446

Redirect..... 1450

Index to Witnesses

Page

DEFENDANTS' (Continued):

ROBERT T. LENNON

Direct..... 1454

Cross..... 1456

WARREN F. BRECHT

Direct..... 1457

Cross..... 1462

CASPAR L. HARRIS, JR.

Direct..... 1463

Cross..... 1465

DINO PERSIO

Direct..... 1468

Cross..... 1470

HARVEY J. CLAWSON

Direct..... 1471

Cross..... 1473

ALBERT A. ZANZUCCKI

Direct..... 1474

Cross..... 1477

JOSEPH SCANSAROLI

Direct..... 1477

Cross..... 1573

Redirect..... 1724

Recross..... 1734

Index to Witnesses

Page

DEFENDANTS' (Continued):

LEON P. OTKISS

Direct..... 1740

Cross..... 1759

Redirect..... 1770

WILLIAM C. COLONA, JR.

Direct..... 1775

Cross..... 1785

THOMAS L. HOLTON

Direct..... 1787

Cross..... 1802

Redirect..... 1805

Recross..... 1805

ANTHONY NATELLI

Direct..... 1808

Cross..... 1949

Redirect..... 2106

Recross..... 2123

Re-redirect..... 2124

Howard Oberlander.

D O U G L A S H O W A R D O B E R L A N D E R,

called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VELIE:

MR. VELIE: May I proceed, your Honor?

THE COURT: Surely.

Q Good morning, Mr. Oberlander.

A Good morning, Mr. Velie.

Q I am going to ask you to keep your voice up, try to speak slowly. This room does not carry voices very well at all.

How are you employed, sir?

A I beg your pardon?

Q How are you employed?

A I am currently employed by Carter Wallace, Inc., in New York City.

Q What is it that you do for Carter Wallace, Incorporated?

A I am presently assisting their corporate comptrolle in various aspects of the business in the financial field.

Q You will have to make an effort to speak up, Mr. Oberlander.

A I am currently assisting the corporate comptroller in various areas in the financial field.

Q All right.

Was there a time when you were employed by Peat, Marwick, Mitchell and Company in Washington, D.C.?

A Yes.

Q When was that, sir?

A It was from 1966, approximately August of '66, until December of 1970.

Q Let me just ask you a background question.

Are you a certified public accountant, Mr. Oberlander?

A No, I'm not.

Q Were you a junior accountant for Peat, Marwick and Mitchell durin g that period?

A Yes, I was.

Q Did you have occasion while you were at Peat, Marwick and Mitchell to work on an engagement for the National Student Marketing Corporation?

A Yes.

Q Did you work on the 1968 audit, do you recall?

A Yes.

Q Do you recall Mr. Natelli having some connection with that audit?

A I believe that he did.

Q Was he the partner in charge, if you recall?

A I beg your pardon?

Q Was he the partner in charge of that audit?

A I believe that he was in charge at that time.

Q I want to show you Government's Exhibit 4C for identification and ask you if you can tell us what this binder is?

A It is a general binder for National Student Marketing Corporation audit.

Q 1968?

A August 31, 1968.

Q August 31 is the year-end of National Student Marketing year, is that correct?

A Yes.

Q I call your attention, sir, to the budget and time summary which is the blue page, stenciled number 1499 in Government's Exhibit 4C, and ask you to read the entry up here at the top and ask you if that refreshes your recollection as to Mr. Natelli's role?

A Yes, it does.

Q What was he?

A Mr. Natelli was a partner in charge of that engagement.

Q Who was the supervisor in charge of that engagement?

A Mr. Scansaroli.

Q Did Mr. Johnston work on it as well?

A Yes.

Q Is that for a brief period of time as you recall?

A To the best of my knowledge, yes.

Q You worked on it as well, is that correct?

A That's correct.

MR. MARTIN: Your Honor, at this time we will stipulate the identification.

Q Just so there's no confusion about it, you do see Mr. Natelli and Mr. Scansaroli here, don't you?

A I do.

Q Do you see Mr. Scansaroli?

A Yes.

Q Do you see Mr. Natelli?

A Yes.

MR. VELIE: The record should reflect that the witness has recognized each of the defendants.

Q What was it you were doing in that audit, your own personal functions?

MR. STILLMAN: I'm having trouble hearing you.

Q What were you doing with respect to that audit, your own functions?

A Is that the August 31, '68 audit?

Q Yes, sir.

A I was assigned a variety of different tasks. Basically my work involved preparation of audit work papers, schedules showing various account balances. I also analyzed a variety of accounts, both balance sheet and operating statement accounts. I worked doing just a variety of audit tasks.

Q I believe you have recognized this 4C as the general binder program questionnaire and trial balance for that audit, is that correct?

A Yes, that's correct.

MR. VELIE: I am going to offer 4C in evidence at this time.

MR. MARTIN: No objection.

MR. STILLMAN: None.

THE COURT: Mr. Velie, in order to be certain here, may I ask there must be some portions of this and only some portions which you consider relative to the Government's case, at least, and if so, I would think it would make your presentation much easier and clearer for the fact finders and everybody else, if you would delineate which portions it is you truly want to put in evidence.

MR. VELIE: I am coming to that, your Honor. We are going to go through various pages together. I did want to have it in evidence so that we can read portions rather than having the formal stumbling blocks.

THE COURT: There doesn't seem to be any objection, but I do think it would be wise if you delineate precisely what is involved here as we go along.

MR. MARTIN: Your Honor, perhaps for the future, because I agree with your Honor's suggestion, we could agree

that we will have no objection to Mr. Velie showing particular pages of any of these documents whose authenticity we have stipulated.

THE COURT: It would seem to me that would be a sensible way of doing it.

MR. MARTIN: Just proceeding on that basis, and the pages that are referred to would be deemed to be part of the offer.

THE COURT: That seems fine to me. Why don't you proceed that way, Mr. Velie, unless you feel that that is unreasonable.

We have received 4C subject to that arrangement.

xx (Government's Exhibit 4C received in evidence.)

Q I show you now stenciled numbered pages 4C at page 1537. The fold out portion of that page is labeled 1537 and the other is 1538. It is all one page, is that correct?

A That's correct.

Q Would you tell the jury, please, what that is?

A This is one portion of National Student Marketing Corporation's trial balance for the year ended August 31, 1968.

Q The pages you are looking at is the earnings portion of the trial balance, is that correct?

A That's correct.

Q Now, sir, did you prepare that page in whole or in part?

Can you tell?

A Yes, I did.

Q For the jury's information, is it fair to say that a trial balance is set up more or less in a left to right arrangement, the leftmost column being the balance that you originally take from the company's books, is that correct?

A That's correct.

Q Entered in there are the figures which come from National Student Marketings own books, is that correct?

A In the lefthand column.

A Yes, that's correct.

Q Can you tell us on or about when you prepared that lefthand column?

A Sometime on or about the 25th of September 1968.

Q That is roughly a month after year-end, is that correct?

A That's correct.

Q What was the profit or loss for National Student Marketing according to your trial balance a month after the year had ended? It is in that column, is that correct?

A You want the lefthand column?

Q Yes, sir, the profit or loss thatyou found on or about September 25.

A Approximately an $80,000 loss.

Q Thereafter various adjusting entries are made on your trial balance, is that correct?

A That's correct.

Q Are you able to trace from that sheet to see if an entry called adjusting entry 51 is one of those adjustments?

You can't tell it from that page alone, can you?

A There is no indication on here that entry 51 is an adjusting entry.

Q Try page 1557 and see if you can tell from the cross reference to the X-1 numbers and so on or any other numbers on the page, if adjusting entry 51 is one of the adjustments.

A Entry 51 appears to be included in a --with some other entries the sum of which appear on page 1538 and 37.

Q 1538, of course, is your trial balance?

A The trial balance, that's correet.

Q So it is fair to say that among the adjustments to your trial balance is adjusting entry 51, is that correct?

A Yes.

Q That is a Peat, Marwick and Mitchell adjusting entry, is that correct, sometimes called PMM 51, if I am not mistaken, is that correct?

A It is an adjusting entry that Peat, Marwick, Mitchell proposed to be made to the client's preliminary trial balance at August 31, 1968.

Q Would you turn again to page 557.

MR. VELIE: Your Honor, I am going to offer the trial balance, if I haven't already done that, and I would also like to offer page 1557.

MR. STILLMAN: I have no objection to either of them.

MR. MARTIN: No objection.

THE COURT: This is part of Government's Exhibit 4C, gentlemen. I believe that the easy way to control this is that when the references are made we will deem that as what the Government actually wants in evidence and unless I hear from either of you I will assume there is no objection.

MR. MARTIN: Right, and I think it will be deemed without an offer even.

THE COURT: I think that's correct.

In other words, Mr. Velie, you don't have to offer this. What is going on here is that C is received subject to specific references which you are making in any event.

MR. VELIE: Very well. We will do that with all the exhibits, your Honor.

Thank you.

THE COURT: Fine.

Q 1557, I call your attention to the description of entry 51, If I may, I will simply read it to the jury. Excuse me, Mr. Oberlander.

(Mr.Velie read from Government Exhibit 4C in evidence to the jury.)

Q WP's mean work papers, is that right?

A That's correct.

Q This is a reference to special sales work papers?

A Yes.

(Mr.Velie read from Government Exhibit 4C in evidence to the jury.)

Q Those were references we saw on your trial balance, is that correct? Do you recall?

A A portion of them are, yes.

MR. VELIE: Entry 51 reads this way.

(Mr.Velie read from Government Exhibit 4C in evidence to the jury.)

Q Is it fair to say that what entry 51 does is records or purports to record $1,700,000-some odd worth of unbilled accounts receivables, books them for the company as an adjusting entry? Is that fair to say?

A Yes, that is correct.

Q Did you prepare this Page 1557 in which I have

just read entry 51?

A Yes, I did.

Q When did you prepare that page?

A On or about the 28th of October 1968.

Q That is roughly two months after the year had ended, is that correct?

A Correct.

Q Now, sir, I show you Government Exhibit 3, which is in evidence, and I ask you if you can identify that?

A Special sales working papers for National Student Marketing Corporation for the year ended August 31, 1968.

Q Are those the special sales working papers referred to by Entry 51?

A It appears they are, sir.

Q I want you to examine the cover and turn the pages in here, look, if you would, at the entries that say what accountant prepared them, and see if you can tell us who prepared that binder of papers, special sales work binder, 3 in evidence.

Who prepared them?

A Mr. Scansaroli prepared those work papers, sir.

Q His initials appear on virtually every page? Is that correct?

A That's correct.

Q The pages are dated, are they not, October 26, October 26, October 26, October 26, October 30, October 30, October 30, October 30, October 31, then there are some that are October 23, October 23 -- are you with me -- an undated page, another undated page.

MR. STILLMAN: Mr.Velie, I am having trouble hearing you.

MR. VELIE: I have read that there are two undated pages.

MR. STILLMAN: Thank you, sir.

Q -- more undated pages, so that the dates of these pages are all from October 23 through about October 30, is that corrhct?

A That's correct.

Q I show you now Government Exhibit 4A for identification and ask you if you can identify th at.

A It is an asset binder prepared as a part of the audit of National Student Marketing Corporation for the year ended August 31, 1968.

Q It is another portion of the work papers for that audit, is that correct?

A That's correct.

Q Did you have a hand in part or in whole in preparing those work papers?

A Yes, I did.

MR. VELIE: Your Honor, I will offer this subject to the references to the pages, if your Honor would permit.

THE COURT: What about 3?

MR. VELIE: 3 is already in evidence, your Honor. It has been offered. Portions have been read by both defense and by the Government.

THE COURT: I just wanted to make sure. I believed that was so, but I wasn't positive.

Gentlemen, I take it 4A will be received on this basis that we alluded to earlier this morning.

MR. STILLMAN: Yes, your Honor.

MR. MARTIN: Fine, your Honor.

xxx (Government Exhibit 4A was received in evidence.)

Q Have a look, please, sir, at Page 1662. Did you prepare that page?

A Yes, I did.

Q When did you prepare that page?

A On or about the first day of November 1968.

Q Again, this is some two months after the year end for 1968 for National Student Marketing, is that correct?

A That's correct.

Q This page reflects again the effect of adjusting Entry 51, does it not?

A In part, yes.

Q Tell me, what does this page have to do with? This is an account for National Student Marketing, isn't it, one of its accounts?

A That's correct.

Q What is the name of the account?

A Per my work paper or this one work paper, I would say the account name is unbilled receivables.

Q What was the balance in the unbilled receivables prior to your making this entry ?

A There was a zero balance in that account.

Q There were no unbilled accounts receivable, is that correct?

A That's correct.

Q After you make Entry 51 on this page what is there on the unbilled accounts receivable on November 1, 1968?

A Approximately $1,741,000.

End 2B

Q I show you now Government Exhibit 4B for identification.

Do you recognize that?

A Yes, I do.

Q What is it?

A It is a liabilities and expense work paper binder prepared as a part of the audit of National Student Marketing Corporation.

Q It is another audit work paper, is that the idea?

A That's correct.

Q For the '68 audit?

A That's correct.

Q Did you have a hand in preparing some portion of that?

A Yes, I did.

Q Turn please to Page 779.

Did you prepare that page?

A Yes, I did.

Q When did you prepare that page?

A On approximately the first day of November 1968.

Q Yo u have already told us about two months after the year end.

MR. STILLMAN: I think we know November is

two months after August 31. We have now heard it 20 times. I do object to its constant repetition.

THE COURT: I will let it stand.

Go ahead.

Q Is this an account of National Student Marketing?

A Yes, it is.

Q What is the name of the account?

A Accrued liabilities on contracts in progress.

Q Tell me, sir, if you can tell, are the costs associated with the contracts booked by Entry 51?

A It appears that they are.

Q In fact, there is a reference here again to adjustingEntry 51, is that correct?

A That is correct.

Q Is it fair to say that what you do on this page is carry out Entry 51 by making this entry and booking something in this account?

A That is correct.

Q What was the balance of National Student Marketing Corporation's account? What did National Student Marketing have in its account for accrued liabilities on contracts in progress before you made this entry ?

A They had a zero balance in that account.

Q There were no accrued costs on contracts in

progress, is that what you are saying?

A That is correct.

Q After you make your entry from adjusting Entry 51, how much do they have then ?

A Approximately $1,069,000.

Q All of these according to your entry are accrued liabilities on contracts in progress, is that correct?

A That is correct.

Q Would you please tell the jury what an accrued liability is?

A Accrued liability represents an amount of money that a corporation or an individual anticipates he will owe as of a certain date or possibly he may even know that he owes a certain amount as of a specific date, that amount of money that he thinks or he knows he will owe to someone outside the corporation.

Q In other words, it is something that he is going to have to pay some day, is that the idea?

A Possibly.

Q All right. It means that he hasn't spent it yet, is that fair to say?

A In cash?

Q That is right.

A That's correct. I would like to correct that

last statement.

Q Sure.

A It is possible that he could have spent it or a portion of it, but because that account is accrued liabilities and it can be used for an estimate, it would still -- he may have spent some of it. He could have spent some of it after the August 31 date. It could be an offsetting accoun t, but I don't believe it is in this instance.

Q Thank you.

I want to call your attention to work regarding a proxy statement. Did you have occasion while you were at Peat, Marwick, Mitchell & Company to work in the National Student Marketing engagement concerning a proxy statement?

A Yes, I did.

Q Did you begin that work in or about May of 1969, if you can recall?

A I believe that is the approximate date, sir.

Q Was Mr. Natelli still in charge of the work for National Student Marketing on the part of Peat, Marwick, Mitchell & Company?

A Yes.

Q Was Mr. Scansaroli a supervisor on that job?

A I believe he was.

Q I show you Page 2520. Do you recall --

THE COURT: Excuse me. Are we dealing now with 4B?

MR. VELIE: I am sorry, your Honor.

This is Exhibit 13 in evidence, already in evidence.

nd 3A

Q I call your attention, Mr. Oberlander, to page 2520 of Exhibit 13.

When the work began on the proxy statement, what was going to be the most recent financial figures to be included in it?

A It appears February 28, 1969.

Q That's the first six months of National Student Marketing's year, is that correct?

A Yes, that's correct.

Q I call your attention to page 2528, Mr. Oberlander.

Did you make some markings on this page?

A Yes, I did.

Q Who set up the page, if you can tell?

A It appears Mr. Scansaroli set it up.

Q Does it look like to you that the greater part of the entries are in Mr. Scansaroli's handwriting, if you can tell?

A It appears they are, yes.

Q Is it fair to say that page 2528 is a trial balance for the year which ended 8-31-68?

A It is a part of it, yes.

Q What are the other parts? Why don't you name the other pages.

A Well, there's also -- 2528 is the asset portion

of the trial balance, 2529 is the liabilities and stockholders equity portion of the trial balance and 2530 is the operating statement portion of the trial balance.

Q You mean the earnings statement, is that correct?

A That's correct.

Q The purpose of this trial balance was to prepare 1968 figures for inclusion from the proxy statement, is that correct?

A I believe that's what Joe was trying to do.

Q All right.

Do you see certain adjustments on page 2528 to the 1968 year?

A Yes, I do.

Q Do you see a deletion from the assets of National Student Marketing, two amounts, one for $678,562 and another in the amount of $70,200?

A Yes, I do see those two amounts.

Q Am I right in saying that's roughly $750,000, three quarters of a million?

A Yes.

Q About three quarters of a million dollars?

A Yes.

Q All right.

What's the date of this page?

A It is dated the 16th day of May 1968.

Q These are reductions, are they not, to unbilled accounts receivables, the ones I just mentioned, is that right?

A Yes, that's correct.

Q All right.

Corresponding liabilities are adjusted on the next page, 2529, is that correct?

A Yes, that is correct.

Q On page 2530 the adjustments are again reflected as they affect the earnings statement, is that correct, or as they appear on the earnings portion of this work sheet?

Look at entries 2 and 5.

A That is correct.

Q Incidentally, each of these pages 2528, 29 and 30 are Mr. Scansaroli's work as far as you can tell, initialed by him and dated?

MR. STILLMAN: We will stipulate to that, your Honor.

MR. VELIE: Let's have the witness' testimony to it.

A That is correct.

Q Each of them dated May 16, 1969?

A That's correct.

Q The write offs of the unbilled accounts receivables are analyzed, are they not, or broken out and displayed to some extent on page 2531, do I have that correctly?

A Could you repeat the question, please?

Q Do you see the write offs on page 2531 explained in some way?

A Yes, I see the journal entries on that page explained in some manner.

Q Once again this is Mr. Scansaroli's work, is that correct?

A Yes, that is correct.

Q What is the date of that page?

A The 12th of May 1969.

Q Turn back, please, to page 2530, if you will. The left hand column of this page shows, does it not -- are you with me? The lefthand most column is labeled balance per report. Is it fair to say that this portion of the trial balance simply shows the entries National Student Marketing had in its year end 1968 report?

A It appears -- it appears that's what that is, sir.

Q The columns going off to the right, labeled NET, what's new, Rensaarlear and NSL, are, are they not, figures being added or pooled in for later acquired companies, is that correct?

A It appears that's correct, sir.

Q Then, of course, you have already shown us the adjustment for contract write offs on this page. That appears there also.

A Yes.

Q I call your attention to page 2531, the page you told us the write offs were shown on, and I direct your attention to entries 1 and 2. Those are, are they not, entries writing off three unbilled account receivable contracts, is that correct?

A One of the entries appears to write off three contracts. The other entry, I don't know exactly what it is writing off from this page.

Q Let's read entry number 1. It says, "Accrued cost on unbilled contracts" in the amount of 489,812, then there is an entry underneath the "deferred income taxes payable" in the ~~amount~~ amount of 188,750, then an entry to "unbilled receivables," 688,562, and an explanation. The explanation says "see explanation for journal entry number 2."

Do I have that right?

A That's correct.

Q Journal entry number 2 treats the same figures, does it not? Service revenue 678,562, then it says, "Cost of service revenue 489,812, provision for deferred income tax 188,750."

These are entries referring to the same figures, is that correct?

A Partially, yes.

Q Tell me where I am wrong. Do not the same three figures appear in each entry although in different positions.

A Okay. I think I see the relationship now.

Q The explanation for number 2, which is, of course, the explanation for number 1 as well, says -- incidentally, this is in Mr. Scansaroli's hand, is that correct, as far as you can tell?

A Yes.

Q "Based on subsequent facts it was decided to adjust three contracts entered into by Ron Michaels: No. 1 Clairol, No. 2, Cheesborough, No. 3 Ban. This in effect is the same as a reclassification entry for report purposes."

The service ~~revenue~~ revenue written off by these entries is 678,562.

Do I have that correct?

A That's correct.

Q Now, sir, do these entries reduce -- are you with

me, Mr. Oberlander?

A Yes, I am.

Q I am on page 2531. These entries, do they reduce the earnings of the company for the year 1969?

MR. STILLMAN: 1969?

MR. VELIE: Yes.

Q Any sales or earnings for 1969, are they reduced by this entry? Do you see anything posted to '69 sales there?

A This is the May -- this appears to be 1968.

Q That's true.

A That he is adjusting.

Q This was done, was it not, on May 12, 1969? Take a look at page 2531 and the date of the entry that was made.

A The entry was made in 1969.

Q Right.

Did the entry reduce '69 sales, the year then in progress?

A I don't believe that that's the purpose of this entry.

Q All right.

Did the entry reduce the retained earnings of the company? Do you see an entry there to retained earnings, retained earnings reduced?

A Yes, I do.

Q Where?

A Entry number 3.

Q I am talking about 1 and 2, which have to do with these three contracts.

Tell me, just to clarify this, this entry number 3 talks about inventory of lists costs, isn't that right, it doesn't talk about these three contracts?

A That's correct.

Q Now, sir, drawing your attention to entries number 1 and 2, do they adjust retained earnings?

A Not directly, but -- they do not directly adjust retained earnings.

Q It is fair to say that they do not directly reduce 1968 earnings? Is that fair to say?

A They -- entries 1 and 2 did not adjust 1968 earnings as -- well, let me start over.

Q Let me ask you this: Do they adjust instead --

MR. MARTIN: Can't the witness be allowed to answer the question he was asked?

THE COURT: I think perhaps you should let him finish.

MR. VELIE: Very well.

THE COURT: You started to say, Mr. Oberlander.

A Entries 1 and 2 are reflected on 2528, 29 and 30 as adjusting entries to 8-31-68 -- to the 8-31-68 trial balance.

Q Yes, I understand that. You have already so testified. I am asking you about Entries 1 and 2 on Page 2531 as they are set out there. Does that entry post anything to 1968 sales?

A Yes, it does.

Q What does it post to 1968 sales? I want you to read it.

A It posts 679,000, roughly, to 1968 sales.

Q Does this entry actually reduce 1968 sales or does it in fact reduce -- I should say effect a tax account instead? Isn't that what it does?

A It reduces sales. There is a portion of that entry that effects a tax account.

Q All right. Let me put it to you this way: The entry that effects the tax account, is it identical to the penny to the amount that you say effects sales?

A No, it is not.

Q I am sorry. I have got this wrong. Revenue, gross revenue. The sales are reduced, you say, by 678,000? Do I have that right?

A That's correct.

Q I apologize. I might have gotten you confused. I may have gotten myself confused.

The costs associated with those revenues are

also adjusted and taken out in the amount of roughly $489,000, is that correct?

A That's correct.

Q So that one would think that the effect on profit would be a downward adjustment of approximately 188,750, the difference between those numbers, is that correct?

MR. MARTIN: Objection to the form, your Honor, what one would think.

THE COURT: That's right. I don't think that is very useful from the questioner's point of view, if I may say so, Mr. Velie.

Rephrase it.

MR. MARTIN: Always happy to help, your Honor.

Q The difference between those figures is the gross profit on those three contracts, is that correct?

A Yes,that is correct.

Q That is $188,750?

A That's correct.

Q The effect of this writeoff is to remove those sales and the costs and the profits, is that correct, it does all those things? It is a writeoff?

A That's correct.

Q At the same time it adjusts the deferred tax account, doesn't it?

A That's correct.

Q In the exact amount to the penny of the gross profit written off, is that correct, 188,750?

A That appears to be correct, sir.

Q Turn, please, to Page 2593. You have told us already that when the proxy project was begun the latest figures to be included were the six month figures, is that correct, ending on February 28, 1969?

A That's correct.

Q During that period of time, when the work was in progress in May, did you have occasion to do an SEC review?

A For the six months I did not do an SEC review.

Q Did somebody else?

A Yes.

Q Who did it?

A Joe.

Q Mr. Scansaroli?

A Yes, Mr. Scansaroli.

Q Page 2593 is his check list for that, is that correct?

A Yes.

Q I draw your attention to Page 2618. Incidentally, what date did he date his check list, 2593?

A May 22, 1969.

Q All right. Let's look at Page 2618. The underlying yellow work paper, whose paper is that?

A That is Mr. Scansaroli's.

Q Does that bear the date of May 22, 1969?

A Yes.

Q Attached to that is a schedule entitled "Analysis of unbilled receivables," is that correct?

A Yes.

Q It shows, does it not, $345,502 of unbilled accounts receivables written off as of the February 28 statements, is that correct?

A That appears to be correct, sir.

THE COURT: What is the total amount of the writeoffs?

MR. VELIE: $345,502,written off as of 2/28, it says on Page 2618.

Y our Honor and the jury will recall that I read this on Mr. Buck's testimony, I read the writeoff column. This is the schedule given to Mr. Scansaroli by Mr. Buck.

Q Turn, please, to Page 2619. Is this again Mr. Scansaroli's page?

A Yes.

MR. STILLMAN: You don't mean the attachment?

MR. VELIE: I mean the work paper.

A Mr. Scansaroli's initials are in the block labeled accountant at the top of that page.

Q And the date is again May 22, 1969?

A That is correct.

Q This is, is it not, an analysis of accounts to be written off, is that correct?

A That is what it is labeled, sir.

Q It shows entries for D. Kelly for two different duPont accounts, one for $8500, one for $9000, is that correct?

A That's correct.

Q It shows analysis of accounts to be written off for a salesman by the name of B. Ganis, is that correct?

A That's correct.

Q Chicken Delight in the amount of $50,625, Cheseborough Ponds in the amount of $30,000, duPont in the amount of $70,000, Chattem Drug in the amount of $56,250, Remington in the amount of $42,747, these are all shown as being Mr. Ganis' contracts to be written off, is that correct?

A That's correct.

Q Would you be good enough to total those up for

us? My arithmetic is faulty. The Ganis contracts.

I make 248, approximately. I believe Mr. Stillman has said he makes that as well.

Do you have that, sir?

A 249,622.

Q So something just a tiny bit under a quarter of a million dollars of Mr. Ganis' commitments to be written off?

A Yes, sir.

Q You see accounts there for Mr. Dreyer to be written off, one for Ford in the amount of $10,000, another for Ford in the amount of $8900, correct?

A Yes,sir.

Q An account for a salesman by the name of Demmon, for a company called Blue Bell in the amount of $2000.

Is that to be written off as well?

A Yes,sir.

Q An account for a salesman bythe name of Strivers for the Westinghouse Company in the amount of $20,000 tobe written off,is that correct?

A Yes,sir.

Q An additional Michaels contract, an account for Mr. Michaels called Listerine in the amount of $70,200, is that correct?

A Yes, sir.

Q I call your attention toPage 2622, once again the underlying page of Mr. Scansaroli's work paper.

A That is correct.

Q Dated May 22,1969?

A Correct.

Q I amgoing to read you the first entry:

"Clairol and Cheseborough Ponds" -- the work paper has something stapled to it, is that correct?

A Yes.

Q The piece of paper that is stapled to it has been stamped 2622?

A That is correct.

Q "Clairol and Cheseborough Ponds? Spring tofall-no contract."

"Number 2, Faberge, changed from spring to fall, no contract."

"Number 3, Campana, is the balance good-(writeoff)?

"Number 4, Pace, balance of 14,492 should be written off (writeoff).

"Number 5, Ban, is this worthless?

"Number 6, Syntex, writeoff.

"Number 7, Scripto, $17,550. What is this for? Writeoff?

There are certain other writings on the page.

Take a look at Page 2623. Is that Mr. Scansaroli's ork paper?

A The underlying sheet is, yes, sir.

Q All right. Has a letter been stapled toit?

A Yes, sir.

Q What is the date of Mr. Scansaroli's work paper?

A The 22nd of May 1969.

Q Does it say on the work paper itself Pontiac

commitment in what appears to be Mr.Scansaroli's handwriting?

A Yes.

MR. VELIE: I would like to show this to the jury, your Honor.

(Mr.Velie read from Government Exhibit 13 in evidence to thejury.)

Q There is underneath that on the next page 2624 another one of Mr. Scan saroli's work pages, is that correct?

THE COURT: 26 what?

MR. VELIE: 2624, your Honor.

THE COURT: All right.

Q This is Mr.Scansaroli's work page, is that correct?

A Yes, the underlying page.

Q And stapled to it is the Pontiac marketing plan and youth market budget recap, is that correct?

A That is correct.

Q Mr.Scansaroli wrote at the top of the page, do I have that right, National Student Marketing Corporation analysis of Pontiac contract?

A That is correct.

Q Again May 22, 1969?

A Correct.

Q The program sheet totals up $1,900,000 of Pontiac marketing plan, is that the idea?

A Yes,sir.

Q Take a look back on Page 2620 and Page 2621. This is, is it not, a list -- incidentally, again, Page 2621 -- Page 2620 is a schedule which has been attached to the work ~~he work~~ paper, is that correct?

A That is correct.

Q The work paper, is that again Mr.Scansaroli's initials up there?

A Yes.

Q Date May 22, 1969?

A Yes.

Q This is an analysis of the contracts in progress booked February, that is as of February 28, 1969, is that correct?

MR. STILLMAN: Could I have that read back, please?

THE COURT: Yes.

(Question read.)

A It appears that is what the schedule purports to be and do, sir.

Q Indeed, on Mr.Scansaroli's own work paper it says National Student Marketing Corporation, contracts recorded in February 1969, is that correct?

A Correct.

nd 5A

Q Is it fair to say that apart from a small contract in the amount of about $21,000, this schedule does not reflect any commitment from Pontiac anywhere near the size of a million dollar Pontiac contract which is stapled into the work papers at May 22, 1969? Have I got that right?

MR. STILLMAN: What page are you looking at now, Mr. Velie?

MR. VELIE: The two page schedule which begins at page 2621.

A 20 and 21.

Q 20 and 21, I'm sorry.

A That's correct.

Q I want you to head back to page 2583. I believe you have already told us this is Mr. Scansaroli's check list for his SEC review stapled to a page he dated May 22, 1969.

A That's correct.

Q Let me read paragraph number 5. The check list itself is in print and there are various markings on the page which look to be initials, is that correct?

A That's correct.

Q All right. I'm going to read the paragraph in print, paragraph 5.

It says, "Inquired into all matters raised at the time of our audit on which the lapse of time might shed

additional light."

On or about May 22, 1969, it appears J. S. was marked next to that, is that correct?

A That's correct.

Q Paragraph number 11, "Inquire as to any significant bad debts or accounts in dispute for which provision has not been made."

Again that's initialed J.S., is that correct?

A That's correct.

Q Were you aware of any reserve for uncollectible unbilled accounts receivables having been set up?

A No, sir.

Q All right.

I call your attention, Mr. Oberlander, to August of 1969. Incidentally, you have already told us, haven't you, that when the proxy project was started the most recent figures to be included in it were to be the six-month financial figures for the period ended in February, is that correct?

A That's correct.

Q As the project went along that plan was changed so that they would include the nine-month figures for the period ended May 31, 1969, is that correct?

A That's correct.

Q In August of 1969, do you recall at or about the night of August 14 and the morning of August 15 standing by at the telephone at the Peat, Marwick, Mitchell Washington, D.C. offices? Have you brought something with you that may refresh your recollection?

A I'm hoping.

Yes, this is a time report.

THE COURT: This is a what?

THE WITNESS: A time report.

THE COURT: Time report for you?

THE WITNESS: Yes, my own.

Q The time report reflects or refreshes your recollection that you did spend a late night on August 14, morning of August 15, is that correct?

A Yes, that would be -- I believe that I stayed late that night because that was a 13-hour day.

Q Fine.

Do you recall a late night in the middle of August, whether or not it is that particular day? Do you have in your mind a recollection of a late night?

A That's correct.

Q Tell us what you were doing on that late night?

A I was working with other members of the audit staff on the NSMC job and we were assembling -- let me strike

assembling -- we were verifying, proofreading and updating material and draft pages of the proxy statement.

Q All right.

Had others gone off to New York to do similar work, if you recall?

A I know some people had gone to New York. I don't know what they were doing up there.

Q Fine.

At or about that time and perhaps a little bit later had you been doing SEC review yourself with respect to the nine-month figures?

A That is correct.

Q I believe you told us Mr. Scansaroli did the one for the six-month figures?

A That is correct.

Q Take a look at page 2654 through 2690 of Exhibit 13 in evidence.

THE COURT: Again, would you restate those pages?

MR. VELIE: 2654 through 2690.

THE COURT: Thank you.

Q Is that your SEC review in those pages?

A A good -- yes, a good bit of it is. In fact, it looks like just about --

Q Take a minute and look at it.

(Pause.)

A Yes, a substantial portion of 2654 through 2690 represents my work.

Q All right.

Incidentally, is an SEC review customary in your firm when documents to be filed with the Commission are prepared even if they are not audited documents? Is it customary to do work of this kind?

THE COURT: Was it customary for PMM to do it at that period of time on accounts like NSMC.

A With a public offering? Yes, it is -- it was customary.

THE COURT: Would you brook an interruption, sir, at this point for the morning recess.

MR. VELIE: Yes.

THE COURT: Thank you.

Ladies and gentlemen, we will take the morning recess at this point.

(Recess.)

THE COURT: Mr. Velie.

MR. VELIE: Yes, your Honor.

BY MR. VELIE:

Q Mr. Oberlander, before the break you were telling us about your SEC review undertaken in August of 1969 and I believe you got so far as to tell us it was customary in your firm at that time in work of this kind, to perform an SEC review.

Now, sir, who was it who asked you to perform that review, if you recall?

A Mr. Scansaroli asked me to, sir.

Q He was your supervisor in the job?

A That's correct.

Q Do you recall if Mr. Scansaroli gave you any special instructions when he asked you to do the SEC review?

A To the best of my recollection, Mr. Scansaroli had to have indicated certain areas for me to look at and gone over the SEC review sheet with me prior to sending me over to the client's office.

Q You say had to have.

Do you have in your mind as you sit there now, a recollection of what Mr. Scansaroli told you?

A I can't recall any specific items or specific points of conversation.

Q Do you recall any conversation about any softness

or possible softnessin the contracts in progress accounting system used by National Student Marketing Corporation?

A No.

Q Doyou recall if he told you about contract write offs in particular as being an area you should be aware of?

A No.

Q Do you recall that he showed you his own papers from his own earlier review?

A No.

Q When you went to do your SEC review, physically, where did you go?

A Across the street, 250 feet, up about six floors.

Q What is there?

A Mr. Kurek.

Q Mr. Kurek over at National Student Marketing's offices?

A That's correct.

Q Did he give you access to National Student Marketing's files so that you could do your work?

A He or one of his assistants did.

Q Did you record your conclusions of your SEC review in your work papers?

A I recorded certain findings in my SEC review work papers.

Q I am going to give you backExhibit 13, sir. Please take a look at page 2683.

Is it fair to say that on page 2683 and on page 2684, on page 2685, 2686, 2687 and 2688, on those pages, 2683 through 88 inclusive, you recorded certain conclusions in your review of unbilled accounts receivables?

A Certain findings, not conclusions.

Q Findings?

Very well.

Let's look at 2687. Did you make certain findings concerning a contract for Faberge?

A Yes, I did.

Q When was that thing booked, do you recall?

A In my work paper I show a date of original booking August 31, 1968.

Q You did this work almost exactly a year later, on August 16, 1969, is that correct?

A That is correct.

Q What was the gross amount of the Faberge contract?

A About 53 -- excuse me -- about $53,000.

Q Do you recall that that is a contract of a salesman by the name of Ganis?

A I wasn't aware of it at that time.

Q What finding did you put down here for Faberge? You want to read it to thejury, please?

A I indicate "no budget now, no prospect, should be deleted from commitment report."

Q All of that is in quotes, isn't it?

A That is correct.

Q Where did you get that to quote it from, where are you quoting from, if you recall?

A I would have taken that from the contract files maintained at NationalStudent Marketing Corporation's headquarters.

Q Files that you say were given toyou by Mr. Kurek or one of his people?

A That is correct.

Q Do you see a finding that you reported in your work papers for a company called Gossard?

A Yes.

Q What did you find about Gossard? First of all, when was it booked?

A It was booked in August of 1968.

Q The year before your schedule, is that correct?

A That's correct.

Q What is the amount?

A The gross amount is $53,800.

Q What was it that you put down as your finding?

A I say "per contract file no signed contract, for account executive, no prospect now, should be deleted from the commitment report."

Q Did you make some findings with respect to a company called Tanya?

A Yes.

Q When was that booked?

A November of '68.

Q In what gross amount?

A Approximately $32,000.

Q Did you record your finding?

A Yes, I did.

Q What did you find?

A "Per contract file no contract, account executive status report at 5/31/69," then I have --

Q You quote it, is that right?

A That is correct.

Q Would you read what you quote?

A "Agency could not allocate advertising funds for '69, will probably go in spring of '70, but would not recommit, change gross revenue from $46,000 to zero dollars."

Q Do you see some findings of yours with regard to contracts from a company called Barnes-Hind?

A Yes.

Q When were those Barnes-Hind contracts booked?

A In November of 1968.

Q EAch of them, is that correct?

A That's correct.

Q What are their gross amounts?

A Approximately twenty-two four and forty-seven eight respectively.

Q When you say twenty-two four, you are talking about $22,400, is that correct?

A That's correct.

Q And when you say forty-seven eight, you are talking about $47,850, is that correct?

A Correct.

Q Something over $70,000 for the two of them, is that correct? Is my arithmetic correct?

A Yes. That is gross amount.

Q What were your findings with respect to the first one of these?

A I show "No contract for account executive," and quoting "commitment 11/30/68 deleted from commitment forms."

Q What about the second one? What did you find with respect to that?

A I have changed gross revenues from 52,200 to 28,000 even.

Q Then there is something in here that looks like "(minus 47 per cent)". Is that correct?

A Yes.

Q What else does it say?

A It looks like -- well, I say "3/31/69," and then "postponed until direct mailing in fall," then I indicate "change to spring of '70" -- it looks like this is all quotes here -- "I suggest you delete this commitment from fiscal year '69 report and place on fiscal'70 per AOE, no contract."

Q No contract, all right.

On the same page do you see a finding of yours with respect to a client called Shick Safety?

A Yes, I do.

Q When was that booked?

A August of 1968.

Q What was the amount of the commitment whenit was booked?

A Thirty thousand.

Q What did you find?

A "Per contract file program has been reduced from 30,000 to 12,000 and 30,000 commitment has been deleted from the commitment report as of 2/21/69. The reason is that the parent NSMC can no longer regard any portion of Shick as a sale because C.A.L. has already taken credit for the same."

Q You wrote something out here in the margin. What is that?

A Wrote "Definitely duplicated."

Q Do you see an entry for a commitment to a company called Bizaar Products?

THE COURT: You have to keep your voice up. I still can't hear you. I am not sure the reporter can.

Repeat that.

Q Do you see a commitment recorded on this page for the Bizaar Products Company?

A Yes, I do.

Q When was that booked, sir?

A August of 1968.

Q In what amount, gross contract?

A $6,580.

Q What did you find with respect to Bizaar?

A I indicate "Per contract file, original contract of $7200 times 90 per cent equals $6,580, has been reduced to a total revised contract." Then I indicate "signed copy is in the file for only $1000, which was subsequently billed in June of 1969."

Q All right. Do you see an entry on the next page for a company called Campana?

A Yes.

Q When was that Campana contract or commitment booked?

A August of '68.

Q In what amount, sir?

A $53,775.

Q What did you find with respect to theCampana?

A I indicate "Per contract file, will not collect the $21,000 unbilled due to credit from 8/31/68 mailing not

previously recognized."

I indicate "Possibility exists that expenses are overstated since no accrued costs have been charged, yet deferred costs have been expensed."

Q I wonder if you would do a favor for me and for the jury, Mr.Oberlander, and take out the piece of scrap paper you had,just total up the gross amounts here. I will read them out to you.

Shick in the amount of $30,000,Gossard $53,775, Faberge, $53,375, Tanya $32,200,Barnes-Hind, $22,400 and also $47,850 --

A 250?

Q 850. I think I mentioned Shick first -- Campana in the amount of $53,775, Bizaar in the amount of $6,580. Check me on this. You should have eight if you have two Barnes-Hind amounts.

A I have eight.

Q Okay. Would you total them up for us, please.

A About $300,000.

Q Mr. Dingwall comes out with a little bit less.

A Say 299,955.

Q Very well. Do you recall on a Monday, August 8th or thereabouts, having occasion to show your papers which you have just been reading to us from to Mr.Kurek? You

are referring to your time sheet again?

A That is correct. It was a Monday or a Tuesday.

Q Very well. That would either be the 18th or the 19th of August, is that correct?

A That is correct.

Q 1969?

A That is correct.

Q You met with Mr. Kurek?

A That is correct.

Q Was anybody else there?

A No. Mr. Kurek was the only person.

Q What did you say to him and what did he say to you?

A I showed him these work papers, indicated the amounts of items that I had found and classified as questionable and as bad and indicated to him that it appeared that Peat, Marwick, Mitchell would propose an adjusting journal entry.

Q What did he say to you?

A He was quite upset that --

Q Try to tell us what he said.

A Number 1, I can't recall the exact words that were used, but the conversation went like -- I said I found X dollars. "I think they should be adjusted retroactively." He said, "Why?"

I said, "Because there is strong evidence that these contracts are questionable or bad and they should be reflected in the May 31 proxy statement for the nine months then ended."

Q That is exactly what your schedule shows?

A That is correct. He then became a little bit agitated, quite agitated, I guess, that I would come in three months after the balance sheet date of May 31 and with the benefit of 20-20 hindsight and with the benefit of passage of time examine these documents and contract files and make a value judgment as to the validity of the contracts.

So I explained to him about the subsequent events concept that all accounting firms follow. It is a generally accepted procedure, generally accepted philosophy.

He could not --

Q What is that you explained t o him on that subject?

A Well, I indicate to him that under this subsequent events concept if something happens after the date of the financial statements that affects the financial statements issued as of -- or to be issued as of a prior date, that those financial statements should be adjusted.

Q Okay.

Was there any further conversation that you recall with Mr. Kurek?

A No.

Q How was it left?

A Well, I was reporting at that time to Mr. Scansaroli. I could see Mr. Kurek was quite upset. I felt that it was really not my place to get involved in an argument with an officer of the -- of NSMC.

So I called Mr.Scansaroli by phone.

Mr.Scansaroli came over in five minutes, ten minutes later. I explained to him what I had done. I showed him my work papers.

End 7A

Q You showed Mr. Scansaroli your work papers?

A Yes.

Q The ones you have been telling us about?

A I'll say I left them with him.

Q All right.

A And I departed.

Q All right.

Following that, on August 20 -- I want you to take a look at page 2654 and 2655 of Government's Exhibit 13 --

THE COURT: 26 --

MR. VELIE: 2654 and 2655.

Q Is that your two page check list for your SEC review?

A Yes, it is.

Q Did you date the work page in which they are stapled August 20, 1969?

A Yes, I did.

Q Did you make certain markings on your check list?

A Yes.

Q You initialed several of the items, is that correct?

A Yes.

Q Did you initial items 5 through 8?

A Yes.

Q You made a special entry there, didn't you?

A I made a notation.

Q All right.

What is your notation?

A I indicated "unbilled receivables discussed between CWR"--

Q Who is that?

A Mr. Randall.

Q All right. Who else?

A "BJK."

Q Who is that?

A Mr. Kurek.

Q And.

A "Joe Scansaroli".

Q Unbilled receivables discussed between CWR, BJK and Joe Scansaroli, is that right?

A That is correct.

Q And your entry covers numbers 5, 6, 7, 8, is that correct?

A That's correct.

Q Number 5 reads as follows:

"Inquire into all matters raised at the time of our audit on which the lapse of time might shed additional light."

"Number 6," Inquire as to unrecorded items such as, A, losses from fire, flood, windstorm, explosion or similar casualties; B, retirements or abandonments of property; C, liabilities other than routine liabilities in the ordinary course of business; D, significant acquistions or sales of property or other transactions not in the ordinary course of business."

"Item number 7, inquire as to changes in material contracts and as to any new contracts, including pension, welfare and profit sharing plans."

"Number 8, inquire as to A, significant increases or decreases in the volume of business other than from seasonal fluctuations; B, changes in the character of the business and proceeds sold; C, important customers lost; D, material returns and allowances; E, material changes in volume of unfilled orders." You indicated those were the subject of discussion between Randall, Kurek and Scansaroli?

A That is correct.

Q Did there come a time when you received instructions to make entries writing off the Pontiac contract? Do you recall?

THE COURT: Excuse me. Before you get into that, I am a little puzzled by what was just inquired of you, Mr. Oberlander.

As I understand it, on your check list there's a notation that there was a meeting or discussion between you, Scansaroli, Cort Randall and Kurek about these unbilled receivables or some of them, correct?

THE WITNESS: No, sir.

THE COURT: That's what I want clarified.

THE WITNESS: I don't ever recall being in on that discussion. I indicate unbilled receivables discussed. I didn't say I discussed.

THE COURT: What do you mean by that notation then?

THE WITNESS: My indication here is that the unbilled receivables were discussed by Mr. Scansaroli, Mr. Kurek and Mr. Randall.

THE COURT: Are you referring to that date which you have already told us about when you called Mr. Scansaroli after conversing with Kurek in the latter's office?

A Sir, I really don't know what date this would have been.

THE COURT: Do you recall now that there was, to your own knowledge, a discussion between Messrs. Scansaroli, Randall and Kurek at or about this time?

THE WITNESS: No, sir, not of my own knowledge.

THE COURT: So, really all you can do is explain

that you made this notation but you can't be sure why, is that it?

THE WITNESS: No, I wouldn't say that, sir. I performed the check list, performed the items on the check list.

THE COURT: Right.

THE WITNESS: These particular items I was unable to check off which would have been indicated just by my initials.

So I held that open because it was an open item.

THE COURT: All right.

THE WITNESS: Because of all these findings in the work papers.

THE COURT: I see.

THE WITNESS: I then, as I related to the Court, told Mr. Scansaroli of the situation. He came over.

THE COURT: He came to Kurek's office?

THE WITNESS: Yes, sir, that's correct.

THE COURT: Right.

THE WITNESS: I departed and didn't do very much else with this.

THE COURT: This was the end of it as far as you were concerned?

THE WITNESS: Except that I was assigned the

responsibility for performing the SEC check off or review. This item was still open.

THE COURT: Correct.

THE WITNESS: So I had to have gotten this information from someone as to the fact that a discussion had occurred.

THE COURT: All right.

Let me ask you this, sir.

Who was that someone?

THE WITNESS: It would have to have been Mr. Scansaroli, sir, because he's the one that I reported to.

THE COURT: As I understand your testimony, at least at this time, in relation to these matters, that is these unbilled receivables and your SEC review in which you encountered this problem as you saw it, you didn't have any discussion with Mr. Randall? Of course I'm referring to the President, not his father.

THE WITNESS: Yes, sir, that's correct, sir, I did not.

THECOURT: Very good. Excuse me, gentlemen, for interrupting. I think we have got it clarified.

BY MR. VELIE:

Q Let's turn now to the Pontiac commitment.

Do you recall being requested to make entries writing it off?

A Yes.

Q Do you happen to recall who asked you to do it?

A It would -- I think it would have had to have been Mr. Scansaroli.

Q When you say would have had to have been, please don't speculate. Do you have a recollection as you sit here now of somebody telling you this?

A Specifically, no, I don't.

Q Do you have a best recollection on which you can piece this together?

A If anybody would have been working for me they would not have told me to write it off. If somebody working above me would have told me to do something, I would do it.

I reported to Mr. Scansaroli and I did what he indicated.

Q So on that basis, you did what Mr. Scansaroli told you?

A That's correct.

Q Take a look at page 2657, 58, 59, 2683. Take the first three first.

Look at page 2657. Do you see an entry of yours near the righthand part of the page? My copy seems to indicate that it is entry number 1. It says "Take out Pontiac, put in Eastern."

A Yes, I do.

Q Did you do that?

A Yes, I did.

Q On page 2658, further entries and an explanation in your hand "Take out Pontiac, put in Eastern."

A Yes, that's correct.

Q Further entries on page 2659, "Pontiac out, Eastern in."

A That's correct.

Q "Pontiac out, Eastern in."

A That's correct.

Q This caused a change in the figures, is that correct?

A Yes, sir.

Q About $300,000 downward adjustment? You can find that on 2659. Tell me if I have the figures right. Pontiac 988,702?

A You mean this recap or summary down at the bottom?

Q Yes. Tell me if I have that right. Is that approximately $300,000?

A I indicate $297,950 addition of gross profit on Eastern.

Q Previous net earnings were 988, is that correct, and the new net earnings after this particular switch is $702,000? Do I have that right?

A Yes, sir.

THE COURT: 700 what?

MR. VELIE: $702,000.

THE COURT: Thank you.

Q That is a difference of 286,000, is that correct?

A That's correct, sir.

Q Downward adjustment?

A Yes, that's correct, downward.

Q Did you also write out the Syntex contract at or about this time?

A I recall an entry with Syntex, sir. I would want to refer to the specific work papers if you have them available.

Q Let's see if I can find that for you.

I think you will find that at 2687, sir. Let me just see if my recollection is correct.

Take a look at page 2687. You have a notation there in the margin, do you not?

A Yes, I do.

Q So Syntex was written out as well as of the May figures, is that correct?

A Yes.

Q Did you do any analysis of the Eastern commitments to figure out the percentage of completion or any other figures that should be booked or recorded in this book, Exhibit 13, when you made those entries?

A No, sir.

Q Somebody gave you the figures?

A Yes, sir.

Q Who was that?

A To the best of my recollection, it was Mr. Scansaroli.

Q And the amount of the Eastern contract you booked is $519,000, is that correct?

A That's the figure we just went over, right?

Q Right.

A Yes, sir, that's correct.

Q You understood that to be a percentage of a larger contract, a contract in the amount of about $800,000, is that correct?

A No, sir.

Q You didn't understand that?

A That's correct.

MR. VELIE: You may inquire.

CROSS-EXAMINATION

BY MR. STILLMAN:

Q Mr.Oberlander, you and I have met before, have we not, sir?

A Yes, we have.

Q Several times?

A That's correct.

Q In New York and in Washington?

A Correct, sir.

Q Mr. Martin was with us, correct?

A That is true.

Q You have known Joseph Scansaroli for some years, correct?

A That is correct, sir.

Q Do you know Mr. Natelli for the same length of time that you know Mr.Scansaroli?

A I have known Mr.Scansaroli for a longer period of time, sir.

Q When you came to work at Peat, Marwick in the Washington office backin' August of 1966, Joe Scansaroli was already employed there?

A That is correct, sir.

Q During the course of that time I gather that you and he worked side by side on certain matters?

A That is correct, sir.

Q During the time that you were there he was a person that was senior to you, as I understand, is that right, sir?

A That is true.

Q Mr.Velie had asked you whether or not y ou are a certified public accountant and you told us you were not. I gather that you have had some training in accounting?

A Yes,that is correct, sir.

Q Would you tell the jury what that was, sir?

A I majored in accounting at American University in Washington, D.C. and I received a B.S. in business administration with a major in accounting.

Q Basically from the time that you were graduated from American University did you go right in to Peat, Marwick?

A Within two months.

Q Mr.Velie asked you if you were a junior accountant. Would you tell the jury how the structure exists at Peat, Marwick, that is, who is a junior and who is a senior? How does that work, sir, how did it work during the time that you were employed at the Washington office of Peat, Marwick, Mitchell?

A Well, at that time in '66 when I first came on board with Peat, Marwick, Mitchell, I was sort of the

lowest man on the totem pole. So I was a junior accountant or a sort of trainee.

They didn't use the term trainee. I think they used junior accountant. Later on I believe instead of the term junior, they may have used staff accountant for one reason or another.

A person progresses from a junior or staff accountant up to a senior accountant up to -- I think up to a supervisor, supervisory position or supervisor, then they go up to manager and up higher.

Q Is it fair to say, Mr. Oberlander, that the way things were is that as you progressed in experience you progressed in the amount of responsibility which was delegated to you or assigned to you in the course of your work?

A That is correct.

Q There came a time, of course, that you were assigned to do some work with respect to the audit of NationalStudent Marketing Corporation for the year ending August 31, 1968, is that correct?

A That is correct, sir.

Q Mr.Velie has referred several times to the fact that some of these work papers have dates on them, as he puts it, two months after August 31, 1968. Do you recall him asking you questions about that?

A Yes, sir.

Q When a firm such as Peat, Marwick, Mitchell -- comes in to do an audit, based on your experience, when does the audit start, as a general proposition?

A With a new client or an established client? It would make a difference,sir.

Q You are quite right. Let's take a new client.

A Assuming that Peat, Marwick knew they were going to be the auditing firm that would perform the audit, in other words,they had been engaged by a new client, prior to the end of their -- the client's fiscal year, it is possible that certain work could -- certain audit work could actually take place before the end of their year end.

Q Correct. Of course, as I understand it, if you didn't have the client prior to a certain date you could not start any audit work, is that right?

A That is correct.

Q Can any audit be completed prior to the time that the client reaches the end of its fiscal year, that is, the fiscal vear being audited?

A No, sir.

Q The fact of the matter is, is it not, the thing that you are auditing is the financial position of this company as of the date which is the close of its fiscal

year, is that right, sir?

A That is correct.

Q So far as the National Student Marketing Corporation was concerned, that date was August 31, 1968, is that right?

A True.

Q There was some testimony that you gave with respect to a trial balance. The one that Mr. Velie was referring to is the one that is contained in Government Exhibit 4C in evidence.

MR. STILLMAN: Mr. Velie, I wonder if I can borrow the original of that.

8B

Q Please tell the jury, Mr. Oberlander, what is a trial balance?

A A trial balance is merely a listing of all the accounts that a company has on its books as of a certain point of time and the dollar value that is in those accounts. If they had cash in the bank of $10,000, you might see a line on a trial balance saying cash in bank and the balance per the company's books at the end of the fiscal year on the trial balance would show $10,000.

Q Would you characterize the trial balance as a working tool in the audit work?

A It is a required working tool.

Q A required one, all right.

Following the preparation of the trial balance, do the auditors then proceed in a sense to analyze the entries that are on the trial balance in order to ascertain to the best of their ability what the figures in fact should be?

A That is correct.

Q Is it also true that in doing that work the auditors engage or prepare a series of so-called adjusting journal entries?

A That is correct.

Q And those are journal entr ies which the auditor perhaps, in a sense gives to the client, and says this is

what we think you should be doing, is that correct?

A That's true.

Q If you would turn in Exhibit 4C to Page 1539. Starting at Page 1539 and continuing on to 40, 41, 42, all the way through 1546, we have various entries which the client had made to its books by adjusting journal entries which affected the trial balance; is that correct?

A That is correct.

Q Is it fair to say that those entries which are titled in here client's post closing entries affect the trial balance in an up and some in a down way, is that right?

A Some would be up and some would be down, yes, sir.

Q Once again the goal of entries such as this is to posture the figures in the most accurate way possible, is that right?

A That is correct, sir.

Q Do you know Mr.John Johnston?

A Yes, I do.

Q Mr. Johnston, as Mr.Velie established earlier, was an accountant at Peat, Marwick, Mitchell who was somewhat senior in status to yourself, is that right?

A That is right.

Q Along with yourself, Joe Scanssaroli, John Johnston was also working on the audit of this particular

client at 8/31/68, correct?

A That is correct, sir.

Q I believe that Mr. Velie has established quite correctly that Mr. Natelli was the partner in charge of that particular audit, is that right?

A That is correct, sir.

Q After we finish looking through the client's adjusting journal entries we see other adjusting journal entries starting, for example, at Page 1547. Would you look at that page. Do you have that infront of you?

A Yes.

Q You are one step ahead of me.

Those are adjusting journal entries which were arrived at by members of the staff of Peat, Marwick, Mitchell which they were proposing to the client to accurately reflect the trial balance at 8/31/1968, is that right?

MR. VELIE: Excuse me. I object to the form. Your Honor, I believe it is apparent that no leading is required with this witness. If he was asked questions he could give answers rather than hearing Mr.Stillman expostulate here.

THE COURT: I think this last question should be reframed. Even from your point of view it gets quite lengthy.

I don't think we need to be lengthy with Mr. Oberlander.

MR. STILLMAN: Certainly, your Honor. I would be happy to. I was just trying to help move it along. If by Mr.Velie's comments he is asking me if I would call Mr. Oberlander as my witness, I am perfectly prepared to make this my direct examination of him .

THE COURT: That is not necessary. He is not asking that. All I say is in response to his objection to this question, I would agree that you just simply reframe it.

MR. STILLMAN: Yes, your Honor.

Q Looking at Page 1548 and pages that continue through 1557. Would you please tell the ladies and gentlemen of the jury in substance what those entries are?

A These are adjusting entries that Peat, Marwick, Mitchell personnel, Johnny Johnston, Mr.Scansaroli and myself, came up with during the course of our audit; adjusted many accounts, there are many entries. Some were up,some were down. It affected the balance sheet accounts as well as the profit and loss.

Q Have you finished?

A Yes.

Q You mentioned in your answer that there were

many accounts.

The fact of the matter is you were not merely looking at the sales of the company in the course of this audit work, is that right?

A No, sir, that is correct.

Q You checked items such as officers' salaries to make sure that those figures were accurate? If you look at Page 1554, the top of that page,--

A That is correct, sir.

Q And you checked items such as the company's investment in trademark which appears the third entry on Page 1552, is that right?

A That is correct, sir.

Q In the course of your work I gather you receive some instructions directly from Mr. Scansaroli?

A Yes, sir.

Q And some from Mr. Johnston?

A Yes, sir.

Q In the scheme of things would you have been in direct communication with Mr. Natelli as the partner or would you have been dealing with Mr.Johnston and Joe Scansaroli?

A I would have been dealing with Mr.Johnston and Mr.Scansaroli.

Q In the course of your work on the August 31, 1968

audit, did Mr.Scansaroli ever suggest to you that you do anything other than the best job that you were capable of?

MR. VELIE: I object to that.

THE COURT: Sustained as to form.

Q Did Mr.Scansaroli make any suggestion to you in the course of your work on the August 31, 1968 audit that your work be anything other than the work you normally did on auditing clients of Peat, Marwick, Mitchell?

A No,sir.

Q In the course of your work on this client and on other clients have you had occasion to make and prepare proposed adjusting journal entries after the close of the fiscal year of the client whose books you are auditing?

A Yes,sir.

Q Anything unusual in that in the course of the work of an auditor, sir?

A Usually that is the only way you can do it.

Q All right, sir.

I would like to turn withyou, Mr. Oberlander, to Government Exhibit 13.

Before we get into Government Exhibit 13, Mr. Oberlander, will you tell us what the practice is of an auditor as he engages in his work insofar as the preparation of work papers are concerned. Let me just amend the question to

say that I am referring to you and the work that you did as an employee of Peat, Marwick, Mitchell.

A With regard to this audit?

Q Yes, sir.

A Well,I would be assigned certain tasks and certain trial balance accounts to analyze by Mr.Scansaroli and/or Mr. Johnston. I would then prepare a work paper in a format that would allow me to analyze that particular type of account.

I would go to the books and records of the corporation. I would take the total of the account so that I could establish some reference point, is it $50 or is it $50,000? And then I would analyze the account to see what made up the material transactions in that account and to also see what made up some of the little things that flowed through it.

So that I would have a good idea in my mind what was happening with that particular account, both how it was handled from a -- from just a procedural point and what philosophy, accounting philosophy they enacted in the company with reference to that particular account.

Q In the course of doing your work I gather you would prepare, and as you are working, you would put your work down on sheets of paper, nice accounting paper, right,

when you were working with figures, and I gather also that one of the things that you would do, and I suppose required to do, was to put your initials and the date on or about which you had done the work.

Is that right, sir?

A That is correct.

(Pause.)

Q After you completed the work on a particular audit, what would happen to those work papers?

A Generally the work papers once I completed work on it, or anyone else, they would be accumulated and put in a binder similar to this.

Were it an asset paper, it would be put in the asset binder; if it were a liability analysis, it would be put in liabilities; expense, in the expense binder where it would then be reviewed by my supervisor.

Q These binders, and I gather they are basically what we have here -- is it fair to say that Government's Exhibit 13 with the covers front and back, are an illustration of a work paper binder suchas the kind of described for the ladies and gentlemen of the jury?

A Yes, that's a completed binder.

Q Did you ever bind up a set of work papers for a particular phase of the work that you had done, sir?

A It is possible I did, but I don't recall doing it.

Q All right.

Do you know whether or not in the course of doing that binding up, that on occasion there's actually an index prepared to thework papers?

A If they are voluminous, yes, sir.

Q You testified earlier in answer to Mr. Velie's

questions that for a period of time the company was going to issue a proxy statement based on its February 28, 1969 figures, is that correct?

A Yes, sir.

Q And that work was being done in or around May of 1969, correct?

A Yes, sir.

Q As I believe you previously told us, it was a determination to proceed based on nine-month figures rather than six months, is that correct?

A I understand that's what happened. The Court told me. I wasn't -- I was aware that it changed, the time period had changed.

Q All right.

I would like you to look at page 2521 of Government's Exhibit 13.

Is that an index to the working papers as of May 23, 1969?

A It appears to be, sir.

Q I gather you recognize the hand of Joseph Scansaroli --

A Yes, sir.

Q -- who prepared that?

A Yes, sir.

Q All right.

If you would, sir, let's turn to page 2531. You have identified 2531, Mr. Oberlander. If you turn to 2531, you will see it's the same in the sense of my question. 2531 and 2532 are work papers prepared by Joseph Scansaroli, correct?

A That's correct, sir.

Q Mr. Velie was asking you with respect to the entries that appear on 2531, either one and two, whether or not either of those entries affected retained earnings.

Do you remember that? Do you remember him asking you that?

A Yes.

Q And he asked, and you said to him, they do not directly affect retained earnings.

Do you remember so testifying?

A Yes, I do.

Q Is there any indirect effect of those entries on retained earnings?

A Yes, there is.

Q Would you please explain that to the jury?

A I don't know if I can, sir.

Q If you can't, I can't.

A These two entries, as I previously told Mr. Velie,

reduced certain balance sheet or certain trial balance accounts. The dollar figures are posted to the trial balance either as a positive figure or a negative figure. It either adds to an account or takes away from.

In these cases, these two instances, it reduced some revenue, it reduced accounts, it reduced some liability accounts and it reduced some asset accounts. These two entries were posted to the specific trial balance accounts that were on the trial balance that was taken off at that time.

They were not posted to -- the net effect on earnings was not posted to the retained earnings account that is on the trial balance. The net effect of any entries that are posted to a statement of income or a statement of loss, whichever the case may be -- the net effect after all the entries are posed is either an increase in income or a decrease in income.

Now, that increase in income will be added to retained earnings, which is a balance sheet figure. A decrease in income, of course, would be subtracted from retained earnings, which would appear on the trial balance, on the stockholders equity section of the trial balance.

I don't know if that will do it.

Q I think you have done just fine. If there are two figures, one of which was to increase retained earnings and

the other to decrease retained earnings by an identical amount, I gather that there would be nothing to be shown, isn't that right?

MR. VELIE: I object to that because he hasn't said that any figure here increases retained earnings or decreases it.

THE COURT: That may be so, but I don't see what's wrong with the question.

MR. VELIE: In that case we will take it as a hypothetical question.

THE COURT: It could be. Why don't you put your question again, Mr. Stillman.

MR. STILLMAN: Can I have the reporter read it back, your Honor?

THE COURT: Yes.

(Question read.)

MR. VELIE: I object to that question as a hypothetical question for a witness who is here to identify entries he made, and he is not an expert. Therefore, it is objected to.

THE COURT: I'm not sure that I agree with all of that. However, on reflection, I'm not so sure that the question is very clear.

Are you just asking him hypothetically about off-

setting entries?

MR. STILLMAN: I will take it that way for the present, your Honor.

THE COURT: I would allow that because I assume you are leading up to something.

MR. STILLMAN: I am just explaining, your Honor, what Mr. Velie has made a great mystery out of it, that's all.

THE COURT: That's neither here nor there. You are, I gather, going to follow up with something else. Be that as it may, I will allow the hypothetical question or the general question.

MR. STILLMAN: May I suggest this:

What I will do, I would like to just reserve on this little area. I know it is getting close to 1 o'clock. I will over the luncheon hour clarify my question so that there would be no misunderstanding at all concerning it.

THE COURT: Fair enough.

MR. STILLMAN: Thank you.

I will move along to something else if you want.

THE COURT: No, we will break now for luncheon and we will resume at 2:15, ladies and gentlemen.

(Jury absent.)

MR. VELIE: The question that came up in the robing room this morning, I want to know if counsel for the defense

are ready to discuss that matter.

MR. STILLMAN: I haven't given it a moment's thought, your Honor.

THE COURT: I think if you would discuss it on your own later today after Court, that would be sufficient if that is all right with you gentlemen.

MR. MARTIN: Your Honor, I would just say so that my thinking is aired -- probably it is premature -- I don't want to end up with an 11 man jury. We have the alternates available.

THE COURT: I'm not suggesting anything. I brought it to your attention. I know what I would do but that's not my business. It's up to you.

I don't think we have to discuss it at this moment. Why don't you take it up with these gentlemen at the conclusion of the Court today, Mr. Velie. If something has to be done, you can let me know.

MR. VELIE: Very well.

(Luncheon recess taken until 2:15 p.m.)

AFTERNOON SESSION

2:15 p.m.

(In open court, jury present.)

D O U G L A S H O W A R D O B E R L A N D E R,

resumed:

CROSS EXAMINATION (Continued)

BY MR. STILLMAN:

Q Mr. Oberlander, would you turn to page 2593 of Government's Exhibit 13, which I have left before you. That is, is it not, sir, the review performed by Joe Scansaroli on or about May 23, 1969 in connection with a proposed proxy statement to be issued by National Student Marketing Corporation, is that correct, sir?

A That's correct.

Q The document reflects that the work being done insofar as the auditors were concerned on the interim financial statements, that that was unaudited, is that correct?

A That's correct.

Q Indeed, the heading of the document itself, which outlines the work that the accountant is to do, states "Outline for review of interim unaudited financial statements included in registration and subsequent period to effective or closing date". Does it not so state?

A That's correct.

Q I believe you told us that there came a time, either on the 14th or the 14th of August -- and you may recall that that was a day in which you put in about 13 hours of work when you checked your time records -- that it was on or about that day that you had a conversation with Joe Scansaroli with respect to some work that he wanted you to do in connection with the proxy material, is that correct?

A That's correct.

Q The work that Joe Scansaroli asked you to do on or about the 14th of August is the same kind of work, is it not, that is outlined in 2593 of the SEC review form which he himself performed back in May, is that correct?

A That's correct.

Q Indeed, the form that you used, which is page 2654, is the identical form except that here it reflects entries made by Douglas Oberlander rather than Joseph Scansaroli, is that right, sir?

A That's correct.

Q By the way, was it unusual for you fellows at Peat, Marwick in the Washington office, to put in 13 hour days back in 1969?

A Well, back at that time it wasn't because we were very busy and it seemed we always had more work than people.

Q Was it your observation back then that Joseph

Scansaroli as a supervisor was working the same kind of long hours as the other accountants in the office?

A He was probably working more than I was.

Q If you will turn to page 2687 of Government's Exhibit 13, that is one of the pages contained in the work papers that you prepared in connection with your review of the contracts in progress of National Student Marketing Corporation, is that right, sir?

A That's correct.

Q At the time that you went over across the street to the National Student Marketing office with the instructions that Joseph Scansaroli had given to you, did you have in mind anything other than to do the kind of work that you had always done as an auditor at Peat, Marwick, Mitchell?

If the question is not intelligible, I will withdraw it, because, as I hear myself, I have trouble with it. So let me withdraw it and do it again.

When Joseph Scansaroli sent you over to do this unaudited review, did he tell you to do anything other than a complete job?

A No.

Q Did he tell you that you should not call it as you saw it as you reviewed the papers at National Student Marketing Corporation?

A No.

Q Indeed, had he ever made any suggestion of that kind to you on any work that you ever did with the man?

A No.

Q And you had worked on other audits with Joe, hadn't you?

A Yes.

Q Page 2687 is a page which is entitled "NSMC unbilled receivables - queries 5-31-1969", and of course, there is your name and a date. I gather what you did was to list certain of the contracts which you had come upon and had some questions about and then put down the information which is contained on page 2687. Is that a fair statement, sir?

A Yes.

Q When Mr. Velie was questioning you concerning the information contained on 2687 and 2688, which follows it, you will recall that he addressed himself to only the items or the amounts listed in the column headed "Original amount."

Do you recall that?

A Yes.

Q For example, when he talked about Schick Safety Razor, he read the amount to you $30,000.

Now, the fact of the matter is, is it not, sir, that reflected right on that page under that amount

are the costs that are applicable to that particular contract?

A That's correct.

Q For example, in the case of Schick, it is $5,000, and subtracting the 5 from the 30, $25,000 was the figure that you were concerned about, is that correct?

A That's correct.

Q The reason that you were concerned with that figure is that you had to look at the gross amount of the contract and you also had to look at the costs that were measured up against it to see the effect on the financial statements of the company, is that right?

MR. VELIE: I object to ~~reading~~ leading of this nature with this witness, who has shown no hostility whatsoever.

THE COURT: I agree, Mr. Stillman. Don't lead him. Just ask him what he considered.

MR. STILLMAN: Your Honor, I really don't think I am leading him and I certainly am not intentionally doing that.

THE COURT: I agree you may not be, but I still make the point. I don't think you have to put words in his mouth. I sense you are probably trying to move things along, but I think it is better if we take our time on this.

MR. STILLMAN: All right, sir. I will be happy to do that.

Q Let's move down to Gossard, which is the third

entry on the page. On that entry Mr. Velie brought to the jury's attention the amount of $53,775.

Do you recall that?

A Yes, I do.

Q Reflected on that page, indeed -- so I am not leading you, is there anything on that page that reflects the costs of the Gossard contract?

A Yes, there is.

Q What is that, sir?

A Well, I show on that page the estimated accrued costs that had previously been booked against the gross amount of the contract, which was the $53,000 and the net amount or gross profit is approximately $25,000.

Q About half of the figure that Mr. Velie brought to our attention, is that right?

A That's right.

Q Indeed, the way in which your schedule is prepared, is it not, is if one continues across the page into the column which you head "Amount of gross profit" and "Questionably bad" you put the amount of $24,970 insofar as that relates to the Gossard entry, is that correct, sir?

A That's correct.

Q Would you go down, for example -- I won't do all of these, but let's justpick some of them -- and look at

Faberge, for example.

With respect to that amount, that item, Mr. Velie read to the jury $53,375. Will you tell us whether or not with respect to Faberge there were any accrued costs reflected on the schedule that he was reading from?

A Yes, there are.

Q What are the costs that are reflected on the schedule?

A $28,805.

Q If we look across to the final column, the "Questionably bad" column, you reflect what amount which you are questioning at that point?

A I am questioning $24,970.

Q As Mr. Velie went down this schedule before he did not read the next item and I would like to hold that for a second and just do one or two more of these, if you would, Mr. Oberlander.

Let's look at the second Barnes-Hind entry which is the one right before Carnation.

With respect to that item, Mr. Velie read to the jury the amount of $47,850.

MR. VELIE: Your Honor, I object to the form of all of these questions. He is reading from a document in evidence. I read the gross amounts, he is reading the net

amounts. The document is in. The witness has nothing to do. It is pure argument. I object to it.

THE COURT: I am not sure that it is pure argument because I think he wants to ask him questions about specific amounts, which I will allow.

MR.VELI E: It is conceded that I read the gross amounts and he is reading the net amounts.

THE COURT: No one says otherwise, Mr. Velie. That is not my point.

Would you please proceed to your next question.

MR. STILLMAN: Thank you, your Honor.

Q With respect to Barnes-Hind, the amount of $47,850 was read by Mr. Velie. Are there any costs with respect to that contract?

A Yes, there are.

Q What costs are there as to that contract, sir, reflected on this schedule?

A $23,200.

gab-1 Oberlander-cross

Q Finally in this connection with this, the next page, 2688, Campana, and you will recall with respect to that item Mr. Velie read the amount of 53,775 as the gross amount. Are there any expenses reflected on the schedule with respect to the Campana account?

A Yes,there are.

Q What are those,sir?

A $28,905.

Q In the course of your reviewing these contracts in progress,did you come up with any entry which actually increased or served to increase the amount of contracts in progress the company should have booked insofar as you were concerned?

A Yes, I did.

Q What item is that, sir?

A On the top of 2688 for Plymouth I came up with an additional item of income of $6000 and the next itemright under Plymouth, Chevrolet used car, I come up with approximately $2900 of additional income.

Q Would you be so kind, Mr. Oberlander, to look back at 2687, the last entry on the page, which pertains to the Carnation Company, and tell us what that entry is and what it reflects.

A Well, that is similar to these two on 2688. It is an additional item of income of $15,000.

Q That is an increase?

A That is correct.

Q Mr.Oberlander, did you at the time that you were doing this work actually come to a dollar total of the amounts which you considered to be bad as of the time that you were doing this work? I would direct your attention to help you to Page 2688.

A Yes, I did.

Q What is that amount, sir?

A Approximately $180,000.

Q That is the last figure which appears at the bottom of 2688, and you round it somewhat. It is 179,667, is that correct?

A That is correct.

Q All right. The other column you had, the questionable, you had $25,000 as well, is that right?

A That is correct.

Q All right. Would you look at this schedule, 2687 and 2688 of Government Exhibit 13, and tell the ladies and gentlemen of the jury what was the single largest commitment which you questioned in the course of your review as of or at or about August 14, 1969?

A The largest one was the Syntex College, Syntex Bonanza and Syntex Poster Wave, I believe it is.

Q What was the total dollar amount of that particular item which you labeled as bad,sir?

A $59,068.

MR. VELIE: Are you using gross numbers now or net numbers, Mr.Stillman?

MR. STILLMAN: Is there an objection to a pending question?

MR. VELIE: I just want to clarify the matter. I used the gross numbers before and Mr.Stillman used the net numbers. I want to know if he now slipped into gross numbers.

MR. STILLMAN: I don't slip into anything. I am trying to put questions the best I know how.

THE COURT: If that is an objection, it is overruled.

Go ahead.

MR. VELIE: My objection is this, would you please clarify for the record, are these gross or net numbers?

THE COURT: Mr.Velie, there are two things wrong with that.

First of all, he is entitled to ask a question. If you want to clarify something later, you willhave the

opportunity as you know on redirect.

Second of all, I don't think he is bound to limit himself to the form of question which you want.

Go ahead.

Q With respect to Syntex, the fact of the matter is, the total contract amount reflected on your schedule if we add up three items, is approximately $120,000, is that correct?

A That is correct.

Q All right. You told us that following completion of your work you had this conversation with Mr. Kurek, and I believe you also wenton to tell us that after Mr. Kurek expressed some unhappiness with what you had presented to him, Mr.Scansaroli came over to meet with Mr. Kurek, is that correct?

A That's correct.

Q Is it also true, sir, that following the meeting between Scansaroli and Kurek on or about the first week in August or the week of August 18, 1969, the Syntex commitment was written off the books of National Student Marketing Corporation?

A That is correct, sir.

Q All right. You also told us before, did you not, that as the result of some information that you received, the Pontiac commitment, this large Pontiac commitment we

have heard so much about, was also written off the books as of that time,is that correct?

A That is correct.

Q And I believe you also told us that the effect of writing off Pontiac and booking Eastern was as Mr.Velie characterized it in his question, a downward adjustment of $286,000, is that correct?

A I believe that is the figure.

Q All right. If we add the Pontiac, the difference between Pontiac and Eastern together with the writeoff of the Syntex amount of $59,000, my mathematics tell me that is approximately $345,000.

Do you agree with that,sir?

A Yes,I would.

Q This expression "downward adjustment," does that mean in basically what I would call lay terms, the fact that the profits of this company were to be reduced by $345,000 as a result of the adjustments which the Peat, Marwick people insisted upon?

A That is correct.

Q Are you familiar, Mr.Oberlander, with the fact that in connection with work of this kind, review for financial statement purpose or filing statement purposes, that the auditors obtained from the client, and generally

the chief financial officer, a representation letter with respect to the accuracy of the figures that the company has presented to its auditors?

A I am aware that that is a policy that they follow.

MR. STILLMAN: May I have Government Exhibit 24, please?

(Pause.)

MR. STILLMAN: Thank you, Mr. Velie.

Q Mr. Oberlander, would you look at Government Exhibit 24 for identification and tell us whether or not that is,as in the case of some of these other binders, a binder of work papers of Peat, Marwick, Mitchell, this type, in connection with a 1969 proxy statement?

A That is correct.

Q I wish you would turn,if you would, sir, to Page 2154, which is the second page of that documen t. I think it is the second page. It is.

Is that a representation letter?

MR. VELIE: Excuse me one second.

MR. STILLMAN: Here is a copy if you would like to look at mine.

(Pause.)

MR. VELIE: Is this by way of an offer of this page?

MR. STILLMAN: Yes.

MR. VELIE: May I have one second of voir dire?

MR. STILLMAN: I haven't offered it yet.

Page 2154, this document. That is the one I offer, Mr.Velie.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q I show you Page 2154 and the work paper to which it is attached, Mr. Oberlander.

Is this your work paper? Can you identify that work paper by any markings of yours on it?

A No, I can't.

Q Do you recognize 2154, and can you tell us from your own memory and experience what that is, apart from reading it out loud? We can all read it out loud. Do you know that piece of paper?

A No, I do not.

MR. VELIE: I object to it on the examination of this witness. He can t really add anything to it.

MR. STILLMAN: Your Honor, I think Mr.Velei has overlooked the fact that we have previously stipulated to the authenticity of all of these documents. If he has a relevance objection, that might be something else.

MR. VELIE: It is irrelevant on this witness'

testimony.

THE COURT: May I see that for a minute, Mr. Oberlander?

THE WITNESS: Yes, sir.

(Pause.)

THE COURT: I must say, Mr. Stillman, I don't see why we offer this now unless you want to --

MR. STILLMAN: I would be happy to explain it to your Honor.

THE COURT: I am going to sustain the objection. It just seems to me to be an interruption of the cross-examination. I agree with you, it is certainly obviously an authentic document.

Since the witness had nothing to do with preparing it, I don't see the point.

MR. STILLMAN: I appreciate that. I would be happy to explain to your Honor the theory of relevance.

THE COURT: Do you want to ask him some questions about it? Go ahead. I don't see that that brings it into evidence right now.

BY MR. STILLMAN:

Q Mr.Oberlander, you do know, do you not, that Bernard Kurek was the person at National Student Marketing Corporation who spoke to Joseph Scansaroli in August of 1969

with respect to unbilled receivables or contracts in progress following the completion of your schedules, is that correct?

A Yes, that's correct.

MR. STILLMAN: I renew my offer again, your Honor.

THE COURT: I am sorry, but that doesn't help at all in my opinion. With all due respect, that is just of no consideration at all to the point I am trying to make.

MR. STILLMAN: I do respectfully disagree, your Honor.

I will move on to something else.

THE COURT: You can offer the thing later. It seems to me to be perfectly competent, but -- did you have anything to do with the preparation of that letter? Do you want to look at it again?

THE WITNESS: No, sir.

THE COURT: Did you ever see it before?

THE WITNESS: No, sir.

THE COURT: I am sorry,Mr. Stillman. One thing at a time. Now is not the time for this.

MR. STILLMAN: I will be patient.

Q Mr. Oberlander, at the time that you presented

Mr.Scansaroli the work papers that you had prepared which are contained in Government Exhibit 13, did Mr.Scansaroli tell you that you should destroy those work papers?

A No.

Q Did you prepare these work papers in duplicate, is that the practice, or just one original?

A Just one original.

Q When you had that one original, you turned it over to Joseph Scansaroli, correct?

A That is correct.

Q And the work papers that are in this binder, Government Exhibit 13 in evidence, are the same work papers that you gave to him back on or about August 18, 1969, is that correct?

A That is correct.

Q And did Joseph Scansaroli in the course of giving you instructions with respect to the unaudited review of the contracts in progress in August of 1968 ask you to do anything less than a thorough job?

A No.

Q Did he ask you to do anything dishonest?

A No.

Q Did he ask you to do anything improper?

MR. VELIE: I object to this at this point.

THE COURT: Again it seems to me we have been through this before,but is this just general?

MR. STILLMAN: Yes, your Honor, general in the sense that it relates to the August 1969 affair.

THE COURT: The proxy statement.

MR. STILLMAN: The proxy statement,right.

MR. VELIE: We have the facts underlying this and the inferences can be argued in summation.

THE COURT: Mr. Velie, you don't have to argue. I am in the midst of trying to consider this. If you don't mind,I would rather you let me do it without any editorializing.

I will certainly allow his opinion, which is obviously all you can expect.

MR. STILLMAN: Absolutely, your Honor.

THE COURT: In relation to any work you did on the proxy in August of '69, that is the area in which he is asking you your opinion.

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q Were you asked to do anything by Joe Scansaroli that you considered to be in the slightest bit improper?

A No.

MR. STILLMAN: Thank you very much, sir.

THE COURT: Mr. Martin.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Good afternoon, Mr. Oberlander.

A How are you,John?

Q Okay. Mr. Oberlander, everybody has told me throughout this trial I sometimes drop my voice. If you can't hear me,you let me know. All right?

A Fine.

Q You said at the outset of Mr.Stillman's cross-examination that you knew Mr.Scansaroli longer than you knew Mr. Natelli, is that correct?

A That is correct.

Q Why was that,sir?

A Mr. Natelli came to the Washington office as the partner after I joined Peat, Marwick, Mitchell. I don't recall the exact date when he arrived, but I came in August of 1966.

Q It would be approximately July of 1968 Mr. Natelli came into the Washington office of Peat, Marwick, Mitchell as its partner in charge.

A I don't remember the date.

Q It was sometime after you were there for a period of time, is that correct?

A Yes, that's correct.

Q As partner in charge of the Washington office Mr. Natelli had responsibilities other than simply working on client engagements, is that correct?

A More than working?

Q As partner in charge of the Washington office, Mr. Natelli I take it, had responsibilities that were simply more than working on client engagements, is that correct?

A Yes, that's correct.

Q He was in charge of administering the entire office, is that correct?

A That's correct.

Q And also as a partner in the firm he had responsibility for various clients, is that correct?

A That's true.

Q Others than National Student Marketing also, isn't that correct?

A That is true.

Q I would like you to go back to Government's Exhibit 13 for a moment, sir.

Before you look at the document, can you tell me, sir, what was your practice at the time you were with Peat, Marwick and Mitchell as to the dating of work papers? Was there a consistent practice that you had or did your practice vary from time to time?

A Well, I would date work papers differently. If I worked on a work paper and completed it the same day, I began it that work paper would be dated that particular day.

If I worked on a work paper starting today, I finished it tomorrow, I may have dated it today or I may have dated it tomorrow. It would depend. I mean, it wasn't any -- there wasn't a hard and fast rule, I am sure. Let's put it this way:

I did not adhere to it.

It would depend on the rush of work, the amount of work. If that work paper tied into other work papers, I could not say a work paper is complete until I had tied in all loose ends, and if it was an important enough matter, then I would probably date it the day I finished it, because that is the day I know or I knew that I wrapped all loose ends up and tied it into the work sheets.

Q I take it, sir, you would never date a work paper

with a date before you started to work on that work paper.

A No.

Q Would you look at page 2684, sir. It is in the back of the book and it is the unbilled receivable review that you did, some of the papers relating to that.

Can you tell us, sir, what that page is?

Do you have the page, sir?

A Yes, I have it. I just wanted to -- this page is an analysis of unbilled receivables and accrued costs that I prepared.

Q What is the date of that work paper?

A The 15th of August 1969.

Q The day you began your work on the unbilled receivables, did you speak to Mr. Kurek on that day?

A Yes, I did.

Q Where did you see him?

A In his office at National Student Marketing Corporation in Washington, D.C.

Q Do you have any recollection about what time it was that you saw Mr. Kurek on that day?

A I believe -- well, to the best of my recollection, it was sometime between 10 in the morning and approximately 2 in the afternoon.

Q If I tell you, sir, that the time here, which is

agreed and uncontradicted, is that Mr. Kurek left with Mr. Natelli and Mr. Scansaroli late on the night of the 14th for New York, he was in New York all day on the 15th, would that refresh your recollection that the day you saw him would have been the 14th?

A Well, if he was in New York on the 15th then I could not have seen him in Washington on the 15th. Therefore, it would have to have been another date.

Q Sometime earlier, I take it, than the 15th?

A It would have to have been earlier.

Q Fine. And that schedule which is page 2684 reflects the fact -- and is dated August 15 -- reflects the fact that your questioning certain unbilled receivables on the books of National Student Marketing, does it not, sir?

A That's correct.

Q Without getting into precise figures, it indicates that you are suggesting as bad something in the neighborhood of 150 to $200,000, is that correct?

I am just asking about 2684.

A Oh, just that one page?

Q Yes.

A Oh, I am sorry.

Q I don't need the exact figure, Mr. Oberlander.

A I did not --on this one page, 2683 -- I am sorry.

Q It was 268¼, wasn't it?

A 84. That's correct, sir.

Q After you started your work on the unbilled receivables in the late morning or early afternoon of August 14, can you recall whether or not on that evening you had occasion to have any discussion with Mr. Scansaroli or Mr. Natelli about what you had found in the unbilled receivable review you were doing to that time?

A It is possible. I just don't recall, sir.

Q Would you turn to page 2654. I just want to try to clarify something if I can. That is the entry the Court was asking you about this morning.

I am sorry. I may have given you the wrong page reference. I believe it is 2654, which is the SEC review schedule.

You recall Judge Tyler asked you about the unbilled receivables discussed between CWR, BJK, J Scansaroli and DHO?

Do you recall being asked about that entry this morning?

A I recall being asked about the entry, yes, sir.

Q That area related to the unbilled receivables, isn't that correct?

A That's correct.

Q You were aware, sir, that you and Mr. Scansaroli had talked to Mr. Kurek about that, is that correct?

A That's correct.

Q Was one of the unbilled receivables that was written off the Pontiac contract?

A That's correct.

Q Were you advised sometime while you were working on that proxy that that matter of the Pontiac write off had been discussed at the printers with Mr. Randall?

A No, sir, I don't recall anything -- any discussion of that nature.

THE COURT: In that regard, do you recall any telephone conversations between you, sir, and anybody in New York City at the printers? Do you recall any specific conversations?

THE WITNESS: To the best of my recollection, sir, I don't recall ever speaking with anyone in New York City.

THE COURT: All right.

Q Would you, sir, turn to page 2516,

Can you tell us, sir, do you recognize the handwriting on page 2516, the notes that appear thereon?

A It appears to be Mr. Natelli's writing.

Q Can you tell us generally what the notes are on pages 2515 and 2516? Are they a type of note that it is usual to find in any work that Peat, Marwick and Mitchell would be doing?

A These are review notes.

Q The notes that a partner prepares as to items that should be reviewed, is that correct?

A Well, a variety of people could prepare them. It could start with the senior on the job, move up through the supervisor, the manager, and then the partner ultimately will have -- when he reviews it will have questions and he will prepare review notes also.

Q There is one review note on page 2516 that has your initials on it.

It says, "Done DHO."

Would you tell the ladies and gentlemen of the jury what that review note -- first, is that in Mr. Natelli's handwriting?

A That appears to be his handwriting, yes, sir.

Q Would you tell the ladies and gentlemen of the jury

what that review note says?

A "Review all unbilled contracts and all deferred costs to determine reasonableness."

Q That is a review note, is it not, sir, prepared in connection with the preparation of the Interstate proxy?

A I --

Q I direct your attention specifically to the first page of those review notes to refresh your recollection, to item 4.

A That's correct, sir.

Q So your review of the unbilled receivables followed a specific direction in the review notes from Mr. Natelli, isn't that correct?

A I am sorry. Would you please repeat the question.

Q So your review of the unbilled receivables was made pursuant to a specific direction of Mr. Natelli contained in his review notes, isn't that right?

THE COURT: Perhaps the witness is having the same problem I am. Do you mean that the instruction came in the review notes or the instruction came face to face?

It could be either way the way you posed it.

MR. MARTIN: Fine.

Q Do you recall discussing this face to face with Mr. Natelli?

A No, sir.

Q You do recall seeing that review note, however, and signing off on it, isn't that right?

A That's correct.

THE COURT: In other words, you saw that contemporaneously and acted upon it?

THE WITNESS: Joe Scansaroli told me what to do with unbilled receivables.

THE COURT: Right.

THE WITNESS: I reviewed it.

THE COURT: It was only later, after the partner, Natelli, reviewed it that he would put such a note like this down, right, in the normal course?

MR. MARTIN: Can I try one question for clarification, your Honor?

THE COURT: I wish you would.

Q Is it possible that that note is what led Mr. Scansaroli to tell you to go over and do that review?

MR. VELIE: I object to asking this witness to speculate as to what is possible. He is here to tell us what he knows.

MR. MARTIN: I thought that was what the Court just did.

THE COURT: That's right, although I am not really

seeking speculation. I accept that criticism from Mr. Velie.

Here is what I am confused about. Here is a note in Natelli's hand, right?

THE WITNESS: Yes, sir.

THE COURT: A moment ago you said that what happens is that the partner ~~finely~~ finally reviews this work and has a page such as this in his hand and that in the process of his review he asks questions and so on.

THE WITNESS: That's correct, sir.

THE COURT: Further, you identified this particular note as being in the hand of Natelli, who at that time was the partner in charge.

THE WITNESS: That's correct, sir.

THE COURT: Of this account.

Now, I take it that you never saw that note in his hand until after you had done all the review work, such as it may have been, that you did in response to what you understood to be a direction from Scansaroli.

THE WITNESS: Exactly.

THE COURT: Very good. As a matter of fact, you may never have seen this note at all until recently, is that so?

THE WITNESS: No, sir.

THE COURT: When did you see it? Do you remember,

approximately.

THE WITNESS: Well, it was -- it would have to have been sometime -- I will say no later than late August of 1969.

THE COURT: Very good. I understand. Thank you for the clarification.

While I have been bold enough to interrupt, Mr. Martin, let me ask one more.

In August of 1969 was your job description that of a senior accountant, a staff accountant, a managing accountant, a senior accountant?

What was it?

THE WITNESS: I was a staff accountant.

THE COURT: You were then a staff accountant?

THE WITNESS: Yes, sir.

THE COURT: When did you become, approximately, as you recall, a staff accountant, as that term was used in PMM's Lexicon in those days? In early '69, late '68?

THE WITNESS: I would say approximately 1968, mid-'68.

THE COURT: In the summer of '68?

THE WITNESS: Spring, late spring, early summer.

THE COURT: All right. Thank you very much.

BY MR. MARTIN:

Q I take it a partner's review notes are prepared before all of the work is done, is that correct?

MR. VELIE: I am going to object to the form of that question and ask that a question be put about these review notes.

THE COURT: I don't think I accept that. I will allow it to stand.

A Will you ask the question again, please?

Q Yes. I take it a partner's review notes, such as the one before you, would be one that would be prepared before all of the work is done, isn't that correct?

A Before all the audit work is done?

Q That's correct.

A Not necessarily.

Q That particular note requests that something be done. I take it Mr. Natelli would not request you to do something that he knewhad been done. Isn't that right?

MR. VELIE: Objection as argumentative at this point. He has the answer and he doesn't like it.

THE COURT: I am not so sure I agree with that. However, I couldn't hear the question. Your voice dropped again. May I have it read back.

(Question read.)

THE COURT: I will allow that.

A That's a reasonable statement.

Q Maybe we will leave it there.

Let me ask you, sir, if you would, turn to Page 2530.

Do you recall,Mr. Oberlander,during Mr.Velie's direct examination he referred you to that page, certain entries thereon reflecting adjustments made to sales. Do you recall that, sir?

A Yes,sir, I do.

Q And he referred you to those in connection with certain entries that were made on Page 2531, is that correct?

A That is correct.

Q Is it also right, sir, that those entries that were made, that is two entries, one in the amount of $70,200 and the other in the amount of $678,562, were made to reduce the sale to be reported as of August 31, 1968?

A That is correct.

Q I want to show you, sir, Government Exhibit 25, the final proxy that was prepared,and the figure for sale and services that appears in that proxy for the year ended August 31, 1968 is $5,799,644.

Sir, does that figure that appeared in the final proxy reflect the writedown of sales by the $750,000 constituting the two adjustments that you were referred to?

A Yes, it does.

Q So that those sales that were written off did not appear in the proxy, isn't that right?

A That is correct.

Q Let me ask you this, sir: You were asked about the entry for taxes payable.

Does that entry, sir, of $188,750 also appear in the profit and loss statement for the period August 31, 1968, that is printed in the final proxy?

A Yes.

Q And it is shown as a reduction of deferred tax provision as a result of net operating loss carry forward in the amount of $188,750?

A That is correct.

Q So that the adjustments that were made in these adjusting entries on Pages 2531 and 2532 did adjust the actual numbers shown in the proxy for the year ended August 31, 1968?

A That is correct, sir.

Q So that the sales in the proxy were not in any sense overstated, were they?

MR. VELIE: I will object to that.

MR. MARTIN: I will withdraw it.

Q You know this man?

A Yes, I do.

Q This defendant in this criminal case?

A Yes, I do.

Q Did he in the course of the work that you did for NSMC or any other time ever ask you to do anything that was wrong?

A No, he did not.

MR. MARTIN: Nothing further.

THE COURT: Mr. Oberlander, at the time you worked for the PMM office in Washington, D.C. was there any other partner in that office than Mr. Natelli?

THE WITNESS: Yes, there was.

THE COURT: How many other partners of the firm were resident there at the time in which you were employed at that office?

THE WITNESS: I believe that there were four partners employed in the Washington office when I left in December of '70.

THE COURT: But at all times that you were there except for the early going before Mr. Natelli arrived, Mr. Natelli, as I understand it, was the managing partner of that particular office in the District of Columbia?

THE WITNESS: That is correct, sir.

THE COURT: Very good. Thank you.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr.Martin just asked you if Mr. Natelli, if I recall the question correctly, ever asked you to do anything wrong in connection with proxy or the National Student Marketing account.

Do you recall if Mr. Natelli ever asked you to do anything with respect to the National Student Marketing proxy matter? Did he ever ask you to do something?

A Yes, he did.

Q What did he ask you to do?

A He asked me to review unbilled receivables and deferred costs for his review note.

Q Per his review note, and we had some colloquy with respect to that. That is the note you signed off on, is that correct?

A That is correct.

Q The review that you did resulted in your schedule, is that correct?

A That is correct.

Q And just so there is no disagreement between Mr. Stillman andmyself on this matter, the gross amount of contracts that you found was something like $296,000, did you say?

A 299.

Q $299,000 of contracts that were no good, that is what you found whenyou did the review, is that correct, gross amount?

A Yes,that is correct.

Q And to put it Mr. Stillman's way, if you were to take out the costs associated with that, the net profit was somewhere around $220,000 worth of gross profit that was no good?

MR. VELIE: Do I have the number right, Mr. Stillman?

MR. STILLMAN: I don't think so.

MR.VELIE: What is the number?

MR. STILLMAN: One column says 179.

MR. VELIE: And the other says 25.

Q So that is 204, is it, thousand dollars of gross profits that is no good, that is the review, is that correct?

A There was a siginificant difference between the amount of gross profit and the amount of -- the gross amount of the contract.

End 4A

Q Of course,

I asked you the gross numbers, is that correct?

A Yes.

Q Mr. Stillman asked you the net numbers?

A That's correct.

Q Nothing wrong with gross numbers, is there?

MR. STILLMAN: I object, your Honor.

THE COURT: Sustained.

Q In fact, they correspond, do they not, to the number this jury is familiar with hearing, that the gross amoun of the contracts booked in '68 was $1,700,000?

MR. STILLMAN: From whom, your Honor?

MR. MARTIN: Objection.

MR. STILLMAN: Objection.

THE COURT: I will sustain it only because I'm not sure it really is a question. You better rephrase that.

MR. VELIE: Very well.

Q The gross amount of the contracts booked as of August 31, 1968 was a million point seven, is that correct, if you know?

A That I don't know.

Q I see.

In any event, the gross amount is the amount without putting in the costs?

Anybody can put in the costs and find out what the net amount is, is that correct?

MR. STILLMAN: I am sorry, your Honor.

MR. VELIE: I will withdraw it. I think it is self explanatory.

Q It is not your position that you were familiar with each and everything Mr. Natelli and Mr. Scansaroli did in their work for National Student Marketing, is it?

A No.

Q So you don't know what other things they did besides what they might have directly told to you, is that correct?

A Basically that's correct.

Q Bear with me a second.

Mr. Martin asked you some of Mr. Natelli's handwriting. I would like to show you another piece of handwriting and ask you if you can identify it. I am showing you Government's Exhibits 21 for identification at page numbered 3120.

Can you tell us whose handwriting this page is, 3120?

A That appears to be Mr. Scansaroli's.

Q Mr. Scansaroli's handwriting?

A Yes.

Q I see.

Let's give you back the thing that you identified for Mr. Martin. That's in Exhibit 13 before you at page 2516. Do you want to compare those two and give us your opinion as to whether the same person wrote those two or not?

A I'm not a handwriting expert, Mr. Velie. I can't tell. This appears to me to be Mr. Scansaroli's handwriting.

Q When you say this, you are talking about 3120.

A That's correct.

Q Whereas 2516 appears to be what?

A Appears to be Mr. Natelli's handwriting.

Q Did anybody tell you that that was Mr. Natelli's handwriting, 2516?

A Not to my knowledge.

Q I see.

Do you recognize the handwriting at 2515?

A That looks like Mr. Scansaroli's handwriting.

Q I see.

THE COURT: Anything else?

MR. VELIE: Yes, your Honor. If you will bear with me for one second, there is a matter that I think we should -- it is a complicated matter. If you bear with me, I believe it may assist the jury and try and straighten this out.

Q Let me do something a little bit simplier first. I'm handing you Government's Exhibit 25 in evidence, which is the final proxy.

You will recall Mr. Martin was asking you if certain figures from the work papers, Exhibit 13, got reflected in figures in the final proxy, Exhibit 25, and your answer, as I recall it, was that certain of the figures have been changed or at least there's a reflection of some of the work done in the work papers which shows up in the final proxy. Do I have it correct?

A I only spoke as to those two figures that he asked me about.

Q Which two figures were those?

Don't look at this yet.

A The final service revenue figure of approximately 5,779,644, I believe, and it was a statement of the retro-active adjustment to taxes for 87,000 or something, some figure. Those two figures he asked me about. I was able to trace in on those two pages, on that one page he showed me.

Q Let me ask you this: In the pages that we have been showing you in Exhibit 13, you recall there was a write off of $878,000 worth of contracts.

Do you recall that?

A That's correct.

Q An additional write off of $70,000 worth of contracts, is that correct?

A That's correct.

Q And if you will recall there was a National Student Market schedule which showed another some $300,000 worth of contracts. Lest anybody get excited about this, that double counts as Listerine, that's 300,000 minus the 70,250 written off, is that correct?

A That's correct.

Q Roughly a million dollars of contracts written off 1968 contracts, is that correct?

A Approximately that amount, yes.

Q Now, sir, I show you the proxy statement in the figures for 1968 and I put before you all the explanatory notes for the figures for 1968 and ask you where it is disclosed to the reader of the proxy statement that a million dollars of 1968 sales have been written off and deleted? Is it disclosed anywhere, that somebody can read it and see that a million dollars was written off?

A You want me to read this?

Q Take a look at it and see if you can find an explanation of a million dollars of sales being written off.

MR. STILLMAN: I object to this about disappears.

THE COURT: The question should be and is to find

out whether or not there's any reference to writeoffs or any explanation of write offs in the '68 figure.

A I'm going to have to read this before I can give you an answer.

THE COURT: All right. You take your time.

The jury and the judge will take the afternoon recess.

(Recess.)

(In open court, jury not present.)

THE COURT: One of you I understand has a worthy application of note. What may that be, I pray.

MR. MARTIN: Your Honor, I did want to take up something on the record. It has come to my attention there was an article in the Wall Street Journal yesterday about this case. Normally I would not want to bring that up with the jury and I don't want to bring it up with the jury because the first thing they will do is go look for it. But there is something in this article that is very disturbing, your Honor, and that is the following:

It contains a quote from a Washington source which says "If we can't get a conviction here we never will."

Your Honor, that has to be --

THE COURT: You mean to say that this is in the article?

MR. MARTIN: That's correct, your Honor.

THE COURT: I have not seen this article.

Well, we will make this a Court's exhibit. Would you part with the article accordingly?

MR. MARTIN: I stole it from somebody else.

THE COURT: Seriously, I do think --

MR. MARTIN: Yes, I will. I think it is a very serious matter because I think it indicates that somebody

associated with the Government is making highly prejudicial statements to the press during the course of this trial.

THE COURT: Have you seen this, Mr. Velie?

MR. VELIE: Yes, I have seen it, your Honor.

THE COURT: It would seem to me that Mr. Martin's assumption is clearly correct. It would have to be some governmental source, assuming that such a statement were made.

MR. VELIE: We have the author of the article sitting in the gallery. I have no idea who in the world said such a thing and I don't know if it is a government source or not, although I am frank to say that the article seems to say that it is.

THE COURT: What would you like me to do, Mr. Martin?

MR. MARTIN: Your Honor, I think that I would like the night to think about it. It was just brought to my attention. I wanted to bring it to the Court's attention as soon as I saw it. I do not think it is a matter we should bring to the attention of the jury because I have the fear that all it would do is to provoke the jury to read the article, if they could find it at this point.

THE COURT: I will certainly await the evening so that you and Mr. Stillman can let me know what you would like the court to do, if anything.

MR. STILLMAN: I would like your Honor to conduct an inquiry to find out who if anyone on behalf of the Government made that statement to the press.

THE COURT: You want me to take time off from the trial to become an investigator?

MR. STILLMAN: No. At sometime convenient to the Court, before the end of this trial I would like your Honor -- I apologize if that imposes any additional burden on the Court --

THE COURT: No, no. The point I am trying to make is I assume you don't think that we should interrupt while I go off on an investigatorial mission. You didn't literally mean that, of course.

What I think you did do is suggest that the Court ought to insist that the United States Attorney's Office investigate this matter and report. Is that it?

MR. STILLMAN: It would certainly be a starting place, your Honor.

THE COURT: I will do that, but I don't want to intrude upon Mr. Velie's conduct of the prosecution, either.

I wonder if we could do this: First of all, if there is anything that either defense counsel wants the Court to do vis-a-vis the jury, I would like to be advised of that before we begin tomorrow morning. Is that fair enough?

MR. MARTIN: Fine, your Honor.

THE COURT: Second of all, I do think that this kind of a statement by any represntative of the Justice Department or perhaps of the SEC would be a serious breach of the Justice Department guidelines on free press - fair trial matters, which I think are still in vogue, although they were originally promulgated several years ago, before the present attorney general was in office.

I wonder, Mr. Velie, could I as an agent of the Court ask Mr. Rakoff to initiate inquiries about this?

MR. VELIE: You certainly may, your Honor. In fact, I anticipated you and have already asked Mr. Rakoff to look into the matter and see if we can determine who said what to whom.

THE COURT: What else has to be done, as Mr. Stillman implied, and I agree with him here, will remain to be seen. We will use this as a starting point.

MR. STILLMAN: Your Honor, just one small thing about the jury itself. It is my instinctive reaction that we should not bring thisarticle to their attention.

5B jhb-1 Oberlander-redirect

THE COURT: I understand. But I wantyou to have a little chance to think about it, as Mr. Martin should have.

MR. STILLMAN: I would most respectfully point out, your Honor, I don't recall that at the end of prior days your Honor has given what I have learned in this courthouse to be referred to as the usual admonitions and I might ask if your Honor would perhaps do that at the end of today's session, that they not discuss the case --

THE COURT: I am sorry,but I don't consider that there is necessarily any usual admonitions, and if there are, I would suggest to you that it is not my habit to be continually admonishing jurors. My own view is that this is a pious incantation of usually no merit or impress whatsoever.

But if there is anything you would specifically like me to say I would be glad to consider it.

MR. STILLMAN: There would be, to the effect that we have been going along for some seven or eight trial days, that all the evidence is not in, that they not discuss the case, that they not form any opinions untilall the evidence is in.

THE COURT: I would put it somewhat differently, but I would put that,and I would also remind them that we

are here in the courtroom and please remember what I said earlier about not reading anything or listening to anything, if they hear the company mentioned or this case mentioned.

Would you like me to do that?

MR. STILLMAN: I would, sir.

MR. MARTIN: That would be appreciated.

MR. VELIE: No objection, of course.

THE COURT:All right. We will clip this article by Mr.Andrews in the Journal and then mark it as Court Exhibit 1 for identification.

xxx (Court Exhibit 1 was marked for identification.)

THE COURT:Bring the jury in.

MR.VELIE: Your Honor, at the end of the trial today we would like to raise a legal matter, if you will bear with us after the jury is excused.

(Jury present.)

THE COURT: All right, Mr.Velie. Have you any more redirect?

MR. VELIE: Your Honor, we had a pending question.

THE COURT: Yes. Once we get that pending question, do you have any more?

MR. VELIE: I think I have one or two more questions following that and then we can let Mr. Oberlander

go.

THE COURT: Very good.

Now, Mr. Oberlander,have you had a chance to read over that page or pages?

THE WITNESS: Yes, sir.

THE COURT: Very good.

BY MR. VELIE:

Q Mr. Oberlander, were you able to find anything that disclosed the fact to a reader of the proxy statement that $1 million of 1968 sales had been written off?

A No, I was unable to find any reference to it.

Q YOu have been spending the better part of the d ay showing us entries in Exhib it 13 and other exhibits which are work papers, are they not?

A That is correct.

Q Work papers are not public documents, are they?

A No, sir.

Q They are kept in the privacy of the accounting firm, is that correct?

A And/or the client's office.

Q Very well. But they are not released to the public, are they?

A No, they are not.

MR. VELIE: I have nothing further.

jhb-4 Oberlander-recross

MR. STILLMAN: Just one or two.

RECROSS-EXAMINATION

BY MR. STILLMAN:

Q Mr. Oberlander, Mr.Velie asked you whether you were aware of other things that Mr.Scansaroli and Mr. Natelli were doing in connection with the NationalStudent Marketing audit. I would like to ask you this, sir: In the course of the time that you were employed by Peat, Marwick, Mitchell in theWashington office, did you come to know other people who know Mr.Scansaroli and Mr.Natelli?

MR. VELIE: I object to this, your Honor. I asked him a completely different question.

THE COURT: I don't follow this. Did you come to know --

MR. STILLMAN: Does he know, did he know at the time, other people who knew both of these men.

THE COURT: First of all, I don't think this is proper recross, to put it kindly, and second of all, I don't see what significance this would possibly have in this case.

MR. STILLMAN: I think, your Honor, that it will have great significance.

THE COURT: Not on recross. It certainly cannot.

MR. STILLMAN: I am prepared, if your Honor

would permit me, to make Mr. Oberlander my witness for the purpose --

THE COURT: You want to make him a character witness?

MR. STILLMAN: Yes, sir.

THE COURT: Oh, well, that is something else again. I think this is a little belated to be thinking of that, isn't it?

MR. STILLMAN: I have to agree with your Honor and perhaps we could just wait for a later time in the trial, if that becomes necessary.

THE COURT: I would suggest that the time for character evidence is not now.

MR. STILLMAN: All right, sir.

THE COURT: With all due respect, we really should wait. Of course, at that time if you want to call Mr. Oberlander as a character witness you may, or perhaps you can agree with Mr. Velie that if he were called as such he would state in the usual fashion that type of evidence.

MR. STILLMAN: Very well, sir.

THE COURT: Either way, I will leave that up to you, of course, but not now.

MR. STILLMAN: Thank you, your Honor.

THE COURT: All right,Mr. Oberlander. Thank you

very much, sir. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. VELIE: Robert J. O'Connor, please.

MR.MARTIN: Your Honor, I hate to say that. I do think this is a matter that is going to require some discussion with the Court outside of the jury because --

THE COURT: What is going to be required?

MR. MARTIN: Mr. O'Connor. I have spoken to Mr. O'Connor. I am quite familiar with the area that Mr. Velie is going to inquire into. It does not relate to anything relevant to the time period of this trial.

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hab-1 O'Connor-direct

THE COURT: Until we hear it I couldn't possibly k now. Let's see what happens. Then if you wish to object, of course you may.

R O B E R T J. O ' C O N N OR, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR. VELIE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. VELIE:

Q Mr. O'Connor, how are you employed, sir?

A Presently?

Q Yes.

A I am financialvice-president for a new hospital in Pittsburgh, Pennsylvania.

Q Are you an accountant?

A Yes.

Q Are you a CPA?

A I am.

Q Was there a time when you used to work for Peat, Marwick, Mitchell & Company in Washington, D.C.?

A There was.

Q When was that?

A December 15,1969, through the first of February,

1972.

Q In that regard did you have occasion, sir --

MR. MARTIN: Your Honor, I object to anything further. This man started his employment in December 15, 1969.

THE COURT: Agreed. I still see no basis to object at this point. I don't know what the Government is going to ask him.

MR. STILLMAN: I would ask for an offer of proof. I think Mr.Velie knows where he is going.

THE COURT: Gentlemen, all in good time.

Next question.

Q I put before you Exhibits 41 and 42, Government Exhibits 41 and 42 for identification. Have you had an opportunity during the break and before, during this afternoon, to review those papers, sir?

A Briefly, yes.

Q Did you prepare many of the papers that are in those binders?

A I prepared work papers in the binders, yes.

Q Did you prepare them while you were working for Peat, Marwick, Mitchell & Company?

A I did.

Q Did you have occasion, sir, while working for

Peat, Marwick, Mitchell & Company to write off --

MR. MARTIN: Objection, your Honor. That is exactly it. He wants to get something before the jury that he knows he has got no right to.

THE COURT: I am not so sure.

MR. VELIE: May I --

THE COURT: Gentlemen, just a moment, please. I am not so sure that is true at all. Apparently you object to any questions of any substance having to do with these two exhibits 41 and 42 for identification.

MR. MARTIN: That is correct.

THE COURT: Is that so?

MR. MARTIN: That is right.

THE COURT: All right. Come up to the side bar and I will rule on this in short order.

(At the side bar.)

MR. VELIE: My offer of proof is this, your Honor. This witness wrote off only some five or six months after it was written on the famous Eastern Airlines contracts as being uncollectable. We have the entries of record in Peat, Marwick's own papers deleting them from the books. I believe according to Mr. Martin's position taken prior to trial that we must prove certain contracts including Eastern are bad.

That is what I am trying to prove. It shows a very short period thereafter, taken right out of the books after it served its purpose, beguiling investors into thinking it was a real commitment. It went on for a brief period. It served its usefulness and came immediately out.

THE COURT: When was it written off?

MR. VELIE: As of the December '69 audit, which is a rump period audit.

THE COURT: I understand.

MR. VELIE: Shortly after the '69 year ended.

THE COURT: What is your objection?

MR. MARTIN: First let me apologize, your Honor. My objection is this, your Honor: Dennis Kelly pleaded guilty ~~there~~ before this Court and stated that at the time that Eastern contract was booked he was guilty of a crime because he did not disclose to Mr. Natelli and Mr.Scansaroli the fact that the commitment that he showed to Mr. Natelli was by a side letter which he gave to Mr. Mullen that was cancellable at will.

It seems to me to call a witness who knows nothing about the circumstances of the Eastern commitment, knows nothing about the services performed by National Student Marketing, is not aware of the facts that in the fall of 1969 National Student Marketing ran into substantial problems

with its campus rep system, where they stopped performing--

MR. STILLMAN: There is an additional point, your Honor.

MR. MARTIN: -- this type of proof is not relevant, your Honor. The fact it was written off could be written off for a million reasons. That is no evidence that there was fraud and certainly no evidence that my client was aware of it at the time in August of 1969.

THE COURT: I don't know that that is so. Maybe your client was or was not.

MR. STILLMAN: The Government knows that and the man pleaded guilty before you and said that in open court.

THE COURT: Mr.Stillman, I would remind you that for many years I am used to people saying things on pleas of guilty which I do not think are very impressive.

Beyond that, even if they are, Kelly has no right to rule on evidence in this case any more than Cort W. Randall or any other defendant in this case.

I submit to you this kind of argument is nonsensical on its face and you are not a nonsensical lawyer.

So please don't interrupt. I am trying to find out something else.

Is it your position, Mr. Velie, that you wish to argue that somehow Natelli and Scansaroli or one of them

participated in this later writeoff?

MR. VELIE: No. I don't have any evidence one way or theother. What I am trying to elicit --

MR. STILLMAN: You know Mr. Scansaroli didn't work for Peat, Marwick.

THE COURT: You are not helping your client by these interruptions, Mr.Stillman. I insist you have every reason to respect my questions which I am entitled to ask.

MR. STILLMAN: I apologize.

MR. VELIE: The answer to your question is no. I am not going to establish direct knowledge of the entries here. The point I am operating on is this, youwill r ecall, of course, that that EAsternAirlines contract first saw the light of day --

THE COURT: I understand that.

MR. VELIE -- under peculiar circumstances and then very shortly thereafter it disappeared, and we are entitled, I believe, to show that, in fact it got canceled as Mr. Natelli should have known it would, and closed his eyes to the true facts. That is a standard of intent and knowledge which we are entitled to prove. What we are showing here is what Mr. Martin said that we must show, certain contracts are bad.

THE COURT: I'm going to listen to this evidence without the jury. I think this is the only prudent way. It is not that simple perhaps. I think it would help the court at least if I listened to it. I assume you can move to this swiftly without the usual --

MR. VELIE: Yes, of course. One further point.

THE COURT: You don't have to argue it. I want to excuse the jury. You can argue later. I want to hear a voir dire of this man. If you will, go right to the heart of the matter. Thenwe can thrash it out.

(In open court.)

THE COURT: Mr. Light and ladies and gentlemen:

In light of the hour, rather than hold you up, this is going to take a little longer than I anticipated perhaps. So to be safe, rather than keep you waiting, I'm going to ask you to go home now and return tomorrow morning at the usual time of 10 o'clock.

Two points which I made earlier in the trial which perhaps bears repeating today.

Number one, remember, we are beginning to move faster now, but we have not heard all of the Government's witnesses, let alone any defense witnesses, if they are forthcoming, and the case is not quite over yet.

So keep an open mind before everything.

Second of all, you remember when you were selected I made the point of asking as to whether or not anybody had read anything about this case or heard anything about this case. At this point I would remind you of that. It is our obligation to decide this case solely on the basis of evidence which comes out here in the courtroom. If by change you encounter a newpaper article about this case or about the company, National Student Marketing, or you happen to hear something on the radio or TV, please walk away from it if that should happen.

Verygood. See you tomorrow morning at 10 o'clock. Good night.

(Jury leaves the courtroom.)

THE COURT: All right, Mr. Velie, swiftly as we go.

BY MR. VELIE:

Q Mr. O'Connor, did you have occasion to write off large portions of the Eastern Airlines commitment?

A In the work papers which I reviewed there is a journal entry in my handwriting that does effectively do that.

Q Is that entry number 24?

A I believe so.

Q You will find references to it in both Exhibit 41, and 42, is that correct?

A Yes.

Q Other contracts were written off?

A Yes.

Q All right.

An additional item of information, if you know. At that time or at or about the time that you caused that write off to be made, did the company abandon its system of booking contracts in progress? Did you understand that to be the case?

THE COURT: Do you understand what he's asking you?

THEWITNESS: Yes. He asked me before.

MR. MARTIN: Got a head start, your Honor.

THE COURT: All right.

A I don't recall it. From looking at the work papers there are references to change in the accounting system.

Q Let me ask you:

Does that refresh your recollection or is it just something you have read?

A It is something I read in the work papers. It is something I read in the newspaper yesterday.

Q Fully apart from that, having read those things, does it bring to life a recollection of something you once knew?

this subject and that is this: Since we have so clearly framed the issue, I would ask your Honor to ask Mr. Velie that if he intends to bring in some witness to come around this present ruling in some other way, that we initially do that outside the presence of thejury to avoid any entanglement on what is obviously a very serious issue insofar as we are concerned.

THE COURT: That is fair enough. In fact, I would break it down even further. I would think that Mr.Velie ought to, and I suspect he would in any event, let you and Mr. Martin know in advance, even in advance of the Court, what his plans are, and then, since we have been alerted to the problem in detail by this voir dire, I would see no harm in your suggestion that we conduct the whole thing by a voir dire.

MR.MARTIN: Fine. Thank you, your Honor.

THE COURT: All right. Very good. See you in the morning.

(Adjourned to Thursday, October 31, 1974, at 10:00 A.M.)

UNITED STATES OF AMERICA

vs. 74 Cr. 43

ANTHONY M. NATELLI and
JOSEPH SCANSAROLI

October 31, 1974
10:00 a.m.

(In the robing room.)

THE COURT: Gentlemen, as I understand it, both defense counsel do not want me to do, which I would do if you asked me to do, is to individually question each juror about the article which appeared in the Wall Street Journal the day before yesterday, October 29.

In other words, as I see it, the first question is whether or not you would like me to question the jury, and the way I would do it would be to have them each come in here individually in your presence and I would ask them suitable questions about that.

But I gather you thought it over and don't want that done at least now.

MR. MARTIN: THat's correct, your Honor. I think at this time we do not want that done. I think maybe if the facts develop that this was definitely something coming from a government representative, we may want to reassess the situation at that time. In and of itself I think at this

point we would not want to alert the jurors to this article at this point.

MR. STILLMAN: I concur, your Honor.

THE COURT: All right.

I gather that there is something, however, that either defense counsel or government counsel feel should be done in other directions.

Would you care to state what that is?

MR. MARTIN: Yes, your Honor. I think at this point in time, given the article, a clear indication that the source of the quote was a government-official, that we should procure an affidavit from each of the people associated with this case in the Securities and Exchange Commission and in the U. S. Attorney's Office as to whether or not prior to the appearance of this article they discussed the matter with Mr. Andrews or anyone else associated with the Wall Street Journal.

I think otherwise you would have a case of the man investigating himself in effect, and I think that this way we will have a record of who did talk to Mr. Andrews upon which we can decide what is the best way to proceed after that.

It is not a great burden. I think any affidavit would be no more than a page and a half probably.

THE COURT: Mr. Velie, you obviously want to respond to that.

MR. VELIE: Yes, I certainly do. Apparently the game here is to take the position that this is not important enough to ask any single juror if he has seen it or if he has been affected by it or to ask if anybody has seen anything in a general way, but more or less to harrass the government during the trial, make it conduct investigations and put out affidavits when the matter is not material enough in the defendants' view even to ask the jury.

I think it is plainly unfair. If at any point it turns out some juror's perception of the case has been affected, it will be time enough to ask questions how about who is at fault. If nothing has been done that the defense thinks may have affected the case, I think it is unfair to put the Government to all this scrambling and so on. I res resist doing it at this time.

If anything turns out, obviously it will be worth going into in whatever detail may have to be done.

THE COURT: I take a somewhat middle ground.

First of all, I don't think that the defense is seeking to harass you. If they are, infact,I would not permit that as such.

What I think is significant here is that if that article is to be believed, somebody violated the free press fair trial guidelines which were promulgated some years ago in the Justice Department and applied to all criminal cases in the United States Courts,as I understand it.

Now, I don't believe there is any indication particularly that any representative of the United States Attorney's office was involved in this.

On the other hand, I don't think the Court can condone this kindof statement which I believe on its face, if made, clearly violates the spirit if not the letter of that set of guidelines..

It may be, of course, that it wasn't a Justice Department lawyer or agent, it may have come from some other agent. I suppose we would have to think of the Securities and Exchange Commission.

My understand is that the New York office of the SEC has had nothing to do with this case;that it is the Washington office,is that so?

MR.VELIE: That is so,your Honor.

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THE COURT: Yesterday I suggested, and I not only suggest, I direct that Mr. Rakoff, whose burdens may be considerable,but they are not as considerable as yours, Mr.Velie,from what I can see, try to find out for the Court just what the Justice Department's position in Washington is on this, and the Washington office of the SEC.

I recognize that one could say that amounts to allowing the culprits to conduct their own investigation.

Maybe,but we have got to start somewhere. This doesn't mean it is going to be the end of the matter.

MR. VELIE: Your Honor, we have anticipated, perhaps, understood you last evening to require this and have already made a formal request to the SEC to find out who, if anybody, has communicated anything to the press.

I can't imagine the Justice Department in Washington had anything to do with this.

I will also check with them.

THE COURT: I wish that that could be done and I want to be understood as directing that it be done.

MR. VELIE: Very well.

THE COURT: There is some other problem. We will proceed a pace, gentlemen. I am not saying this is the end of the matter. We may have to indulge in other techniques before we are done, but for the start that is

enough.

Now, I am going to instruct this jury that by reason of an evidentiary ruling of the Court out of their presence the witness O'Connor has been withdrawn. His testimony will be disregarded, and that is all I intend to say.

MR. VELIE: Thank you, your Honor.

On that subject I have thought about your ruling last evening. I am going to try to come about it a different way. I will have a written offer of proof to submit. I hope --

THE COURT: I don't want to prejudice that. You can do anything you want.

My ruling as to O'Connor stands.

MR. VELIE: Fine.

THE COURT: I am glad we conducted a voir dire because what he said on voir dire turned out in my judgment at least to be extremely important. So at least you understand me to that extent, I trust.

All right.

MR.MARTIN: Your Honor, on that subject I would just like to give to the Court, which might be helpful, a copy of the memorandum in those work papers, the Wharton memorandum to which Mr. O'Connor referred, since I understand

that Mr.Wharton called me last night after Mr.Velie called him and said he is going to be here tomorrow.

So there is an issue that your Honor will have to confront again.

THE COURT: Thank you very much.

I unfortunately in a fit of optimism apparently scheduled some hearing this morning, which I had lost track of, which is my fault. I am going to have to consult with the lawyers. I will apologize to the jury for the delay, which is my fault.

If you will indulge me a few moments.

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(In open court; jury present.)

THE COURT: Good morning. Mr. Light and ladies and gentlemen, I apologize to you and to the litigants and the lawyers. The delay was my fault. I encountered an application which I didn't expect in another case and it took me this time.

So I apologize to you all.

Now, Mr.Velie, before you begin I should also announce to the jury that last evening after you left the Court made a ruling which you should know about.

For technical reasons I have stricken the testimony of the witness Mr. O'Connor, who was just beginning, as you know, before you left last evening. So his testimony is now withdrawn andout of the case and you should disregard it.

All right, Mr.Velie.

MR. VELIE: Thank you,your Honor.

If the Court will bear with me for a moment, we are going to read testimony this morning and I am loaning counsel one of my copies.

Your Honor, if the Court permits, with us this morning is Assistant United States Attorneys Thomas Fryman, who will be reading the answer voices, and I am going to askMr.Fryman simply to sit onthe witness stand as

an aid to the jury in distinguishing between questions and answers as they are read.

May I proceed,your Honor?

THE COURT: Surely.

MR. VELIE: Mr.Fryman, would you please take the stand.

Ladies and gentlemen, in connection with grand jury testimony of the defendants Scansaroli and Natelli, a portion of which will be read to you this morning, the Government and the defendants have stipulated that each of the defendants, each of them, appeared in the grand jury room without counsel, it being a requirement of grand jury proceedings that the witness appear without counsel, and each defendant was advised of his constitutional rights, including the right to leave the room to consult with counsel and the right to remain silent.

Mr.Fryman, wouldyou please turn to Mr. Scansaroli's grand jury transcript, Pages 54 through 59.

MR. MARTIN: Your Honor, so the record is clear, I would note my objection to reading Mr. Scansaroli's testimony.

THE COURT: Yes, for the reasons you have already urged, I assume.

MR. MARTIN: That is right, your Honor.

THE COURT: The ruling still pertains. Exception to the defense.

MR. VELIE: Mr. Fryman,we will begin at Line 17. I will read the questions which were put by Assistant United States Attorney Harold McGuire, and you,sir, the answers of the defendant Mr.Scansaroli.

Page 54.

MR. STILLMAN: Mr.Velie, could you just note the date of the appearance?

MR. VELIE: Yes, of course. October 31, 1973. I will be the McGuire voice, you theSCansaroli voice.

"Q Can you tell us in general what role you had in preparing the National Student Marketing figures that were contained in this proxy statement?

"A At this point we had to consolidate a lot of figures. They were going to acquire four companies. We had to come up with pro forma statements consolidating those four companies with other companies in National Student Marketing.

"This was for, I believe, five years plus a short period from their last fixcal year to the end of May. It was my job,with help, to get these figures up from the various locations.

"They had subsidiaries throughout the country

and put them together and coming up with trial balances, eventually coming up with financial statements.

"Q There are two kinds of financial statements shown in this proxy material, if I am not correct, that is,if I am not incorrect.

"First, there are financial statements for National Student Marketing Corporation itself, including subsidiaries, and financial statements for the various companies which were to be acquired, is that not so?

"A Yes.

2A

"Q In addition to that there are certain socalled proforma statements, is that not so?

"A Yes.

"Q Canyou tell us what a proforma statement is?

"A A proforma statement would show what would happen if National Student Marketing was combined with the company they were going to acquire. It would show what the situation would look like if they had acquired it.

"Q Those so-called proforma statements are contained at pages 7 through 14 of the proxy statement, is that not a fact?

"A Yes.

"Q In addition to that there is a balance sheet and various other financial statements for National Student Marketing Corporation itself, contained at pages 65 through 74, am I correct?

"A Yes.

"Q And a certification letter for those financial statements is at page 64?

"A Yes.

"Q Also there is a statement of earnings for National Student Marketing Corporation contained at pages 21 through 23.

"A Yes.

"Q Those are the statements that you were referring to, is that not correct?

"A Yes.

"Q First I would like to direct your attention to the net sales figure for National Student Marketing Corporation for the year ended August 31, 1968 which are shown on page 21.

"Now, are those figures the same figures as were reported in the certified statement as of the year end 1968?

"A No.

"Q What is the difference?

"A One difference is ~~what's~~ that on those four contracts that we wrote off we adjusted those contracts as of August 31, 1968. We in fact retroactively adjusted those ~~for~~ four contracts. In addition we made a tax adjustment in that year.

"Q You did that, if I am not mistaken, without disclosing to anybody anywhere in those financial statements that that is what you were doing?

"A Yes, that's right.

"Q It was approximately three-quarters of a million dollars in sales that you were writing off, is that not so?

"A Yes.

"Q You were also writing off some corresponding costs of sales, is that not so?

"A Yes.

"Q You were also decreasing the figure for unbilled receivables by approximately the same three-quarters of a million dollars and decreasing the figures for accrued costs on contracts in progress accordingly?

"A Yes.

"Q By about a half million dollars?

"A Yes.

"Q Was there any discussion between you and others from Peat, Marwick, Mitchell and Company as to whether or not you would write a footnote or make some other disclosure that you were decreasing sales and accounts receivables by these amounts?

"A Yes, Tony Natelli and I discussed the exact amount of this adjustment on the '68 financial statements and because the net adjustment would have no affect or have very little affect on the 1968 statement of earnings, we decided there was no reason that it should be disclosed.

"Q In other words, you came to the conclusion that because the bottom line didn't change very much there was no reason to disclose that you were writing off three-quarters of a million dollars in sales?

"A That's right. In addition, compared to total sales it wasn't material either.

"Q What was the total sales figure?

"A After this adjustment, it was $5,799,000.

"Q And three-quarters of a million you determined was not material in comparison with that figure?

"A It would have been $6,500,000 before adjustments and 10 per cent is about $650,000. I think the biggest reason was that it had not effect on the net earnings of the company.

"Q Why was it that this didn't have any effect on the net earnings of the company?

"A Because the adjustment to write off this contract decreased income by approximately $188,000and I believe the adjustment to reduce the taxes was in that area, I think $210,000 or something in that area.

"In effect we were increasing income by $210,000 and reducing income by $188,000 for the contracts. So the net difference was immaterial. We decided not to adjust the statement of earnings or not show it in a note that they were adjusted.

"Q Was that decision discussed in your presence with any of the management from National Student Marketing Corporation?

"A I don't recall. I don't think so, but I can't recall if it wa

"Q That was a decision that you and Mr. Natelli arriv

at on your own hook, so to speak?

"A Yes."

MR. VELIE: Please turn to page 798, of the transcript. I am reading from Line 22, page 79.

"Q Tell us this. What was your function in the preparation for the proxy statement?

"A I was basically responsible for putting them together. This was a proxy statement here. As you can see, there are various types of combinations of figures, notes to financial statements, pooling of interests and purchasing and various types of accounting procedures that we had to go through to get these financial figures. Basically it was my job with the people that were working with me to accumulate these figures and adjust them and come out with final figures.

"Q What I'm getting at, were you in the charge of the operation so far as Peat, Marwick was concerned?

"A I was the supervisor as far as putting the figures together.

"Q Was there anybody working over you?

"A No one except the partner.

"Q Mr. Natelli?

"A Yes."

MR. VELIE: That completes the reading as of now of portions of Mr. Scansaroli's testimony.

Please turn to the testimony of Mr. Natelli in the other book on November 23, 1973, page 41.

MR. MARTIN: May I just raise a question? I take it that is all of Mr. Scansaroli you are reading today?

MR. VELIE: That is all I will read of Mr. Scansaroli's testimony today.

MR. STILLMAN: I assume this next reading, your Honor, is being offered with respect to Mr. Natelli and not wi respect to Mr. Scansaroli.

THE COURT: I assume so, too.

MR. STILLMAN: I object.

THE COURT: You object for the reasons already adverted to earlier?

MR. STILLMAN: Precisely, sir.

THE COURT: Same ruling.

However, it should be understood that each one of the defendant's testimony is being only offered as against him, not as against both defendants.

MR. VELIE: Mr. Fryman, I will read from line 4 of Mr. Natelli's transcript. You will please be Mr. Natelli, I will be Harold McGuire, the Assistant United States Attorney in the grand jury room:

"Q I would like to show you, sir, a document," marked in this proceeding ladies and gentlemen, as Exhibit 17, Government's Exhibit 17 in evidence, "and ask you whether

that is a document that comes from your personal files of Peat, Marwick, Mitchell and Company?

"A Yes, it is.

"Q Exhibit 17 in evidence is a proof of the financial statements which were to be put into the proxy statement, is that not correct, sir?

"A Yes, a portion of them, yes.

"Q Is the handwriting on this printers proof your handwriting, sir?

"A Yes, it is.

"Q There's a date on the first page, August 9, '69. Is that approximately the date when you received the printers proof?

"A I believe so.

"Q Now, August 9, 1969 was a Saturday, sir. Can you tell us whether you received that document on a Saturday?

"A It could well have been. If it says August 9, I assume that I did. It was not unusual for me to work on Saturdays.

"Q I see. After receiving that printers proof did you have occasion to discuss its contents with others in your firm?

"A Yes. Certainly it was still a working document at this time and would have been subject of additional work and

discussions with Mr. Scansaroli, who was working with me as well as Mr. Otkiss, who is the SEC reviewing partner in our Philadelphia office at the time.

"Q Now, I direct your attention, Mr. Natelli, to the page which has been numbered 17498, which is page 11 of the printers proof.

"Do you see that, sir?

"A Yes, I do.

"Q Now, page 11 consists among other things, of a reconcillation of the amount of sales that the company had originally ordered in 1968 with the 1968 figures that were to be reported in the proxy statement, is that not fair?

"A Yes, it is.

"Q And the figure for the amount of sales originally reported was $4,989,446, am I correct?

"A Yes.

"Q That's the figure for sales that was contained in the company's annual report to stockholders, isn't it?

"A Yes.

"Q All right. Now, following that there is the notation which is crossed out on Exhibit 17, retroactive adjustment for contract losses, note C, and the entry, a minus figure of $70,200. Do you see that, sir?

"A Yes, I do.

"Q Who crossed out that entry on the document that you have in front of you?

"A I believe I did.

"Q Was it $70,200 figure representing the adjustment for contract losses a correct figure?

"A No, it was not. It was a portion of the total amount of adjustments that were required.

"Q In fact, 70,200 was the amount of the Listerine contract alone, wasn't it?

"A Yes, it was.

"Q Now, it is a fact, Mr. Natelli, that the adjustment that were made retroactively to the 1968 sales figures consisted of three other Ron Michaels commitments which had been discovered to be no good in addition to the Listerine commitment, isn't that right?

"A Yes, it is.

"Q Can you tell us why those three other contracts totaling some $678,000 in sales figures were not included as part of the adjustment on this printers proof?

"A I can explain why I think it may have happened based on looking at the figures in the work papers in referring this document within the past 24 hours, but I cannot tell you exactly why it happened because I don't know exactly why it happened.

"Q Did you personally draft the page that I have just directed to your attention, page 17498?

"A I believe that I drafted all or the major portion of the narrative portion of it. I do not believe that the numbers indicated were inserted by me.

"Q Who do you think inserted the numbers?

"A Probably Mr. Scansaroli or someone working with him. I say there's an outside possibility it would be someone from NSM also. I am not sure.

"Q So it was Mr. Scansaroli or someone else working either for you or for National Student Marketing that made the mistake in not putting the $878,000 adjustment in that printers proof, is that it, sir?

"A I believe that is correct, sir.

"Q When you received the proof, did you recognize an error had been made?

"A I honestly do not know. I would say I probably did. I cannot recall. My attention was directed at the disclosure of this item and what had been said to, if anything, to disclose it."

"Q Do you remember calling the error to anyone's attention?

"A I can't recall directly, but yet I must have. For example, when I was discussing this item with Mr. Otkiss in Philadelphia, I am quite sure I would have told him the full background of the Ron Michaels contracts which are involved and the tax adjustment which is also involved. That would have involved discussing the amount of the contracts as well as gross profits.

"Q But it is a fact, isn't it, Mr. Natelli, that the $678,000 adjustment instead of being reflected on the proper line in this proof is netted with the sales figures for pooled companies reflected retroactively, isn't that right?

"A Yes, it is.

"Q And so where the sales figure for the pooled companies that National Student Marketing Corporation had acquired since August 31, 1968, should have been more than $7 million, it was in fact reflected on this proof as $6,389,464, isn't that right?

"A Yes, that is correct.

"Q And it wasn't disclosed in that printer's proof that the adjustment to NSMC's own sales figures should be a figure approximating three-quarters of a million dollars,

not $70,000?

"A That is correct.

"Q Now, on the basis of discussions with Mr. Otkiss and on the basis of your own difficulty in finding an appropriate way to describe the retroactive adjustments, did you and Mr. Otkiss conclude that it was proper simply to omit any mention of them in the proxy statement?

"A Yes, it is correct. I would add that an additional consideration was our feeling that the net amount of the adjustments was immaterial.

"Q The net amount being an effect of some $21,000 on the profit and loss statement for the year ending August 31, 1968, is that it?

"A That is correct.

"Q So on the next version of the financial statements the entry for retroactive adjustment for contract losses and the accompanying footnote were eliminated entirely, is that it?

"A That is correct, sir.

"Q And the entire $750,000 adjustment was included as a subtraction from the sales of the pooled companies reflected retroactively, is that it?

"A That is correct.

"Q So the sales of the pooled companies were under-

stated by approximately $750,000 and the retroactive adjustment to NSMC sales wasn't shown at all?

"A That is correct."

MR. VELIE: That completes today's reading of the portions of the grand jury transcript.

(Pause.)

MR. VELIE: Your Honor, the Government calls John T. Johnston.

J O H N T. J O H N S T O N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VELIE:

Q Good morning, Mr. Johnston.

A Good morning.

Q Would you be good enough to tell us for whom you work.

A I work for the National Railroad Passenger Corporation, commonly known as Amtrak.

Q Amtrak. Was there a time when you worked for Peat,Marwick, Mitchell & Company?

A There was.

Q InWashington, D.C.?

A That's correct.

Q What did you do for Peat, Marwick?

A I was on the accounting staff.

Q What we call staff accountant, is that correct, or did you have a managerial rank?

A I did not have a managerial rank.

Q What was your rank in the firm, let's say, in the fall of 1968, do you recall?

A Fall of 1968 I was a senior accountant.

Q A senior accountant?

A Yes.

Q In the fall of 1968 did you have occasion to work for some time on Peat, Marwick, Mitchell's enagement with the National Student Marketing Corporation?

A I did.

Q Was that an audit for the year ended August 31, 1968?

A That's correct.

Q Who was the partner in charge, as yourecall?

A Mr. Anthony Natelli was the partner.

Q Do you see him here?

MR. MARTIN: The identification is conceded, your Honor.

Q Was there someone above you also on that audit?

A There was.

Q Who was that?

A Mr. Joseph Scansaroli.

Q Do you see him here?

MR. STILLMAN: The gentlemen certainly know each other, your Honor. We concede that.

A I do.

MR. VELIE: The identifications are conceded. Very well.

Q Do you recall if Douglas Oberlander also worked on that audit under you?

A He did.

Q Did you work on what was called the audit program while you were working on that audit? Did you have a function concerning the audit program?

A I am not sure that I understand the question.

Q First of all, I am going to hand you Government Exhibit 4C in evidence. See if you can identify this binder (handing).

A This appears to be the general binder for the August 31, 1968 audit.

Q All right. Why don't you look in there and see if you can find what is commonly called an audit program.

A There is.

Q Did you have some function with respect to

that audit program when the audit began or when you worked on it?

A I have signed off a number of the steps in this audit program.

Q Was it one of your functions to examine the audit program and modify it where needed?

A That is correct.

Q That was your function?

A That is correct.

Q The audit program, is it fair to say, is a printed sheet of steps to take in lots of audits, it fits lots of different audits for lots of different companies, is that right?

A It would be.

Q And that you can modify it for the special needs of the company whose needs are not met by the general steps on the audit program, is that correct?

A That is correct.

Q So one of your functions being to modify that program, if necessary, refers to the need to change it if there was any special steps that ought to be taken, is that correct?

A That's correct.

Q Did there come a time when you left work on

that audit prior to the completion of the audit?

A Yes.

Q You left to work on other matters?

A Yes,sir.

Q When was that, if you recall?

A I don't recall the specific date. I think the time records which had been made available to you probably indicate that.

Q We have time records inhere, don't we, at 1499? I am referring, of course --

MR. STILLMAN: Mr.Velie, I am straining.

Q 1499 of 4C indicates the time records, is that correct?

A That's correct.

3B

Q Can you consult that and tell us what appears to be the last week in which you put any input into the audit?

A That would be the week ended October 25.

Q 1968?

A 1968.

Q Some time during the week ended November 25 you ceased your functions in that work, is that correct?

A That's correct.

Q Do you recall if there was anything on the general audit program concerning unbilled accounts receivables?

A To the best of my recollection, there was not.

Q It was your job to modify it, is that right?

MR. STILLMAN: Repetitious, your Honor.

THE COURT: I don't understand the question. Was your job modified?

MR. VELIE: I did not make myself clear.

MR. MARTIN: I also think he misstates the testimony.

THE COURT: We are going to get a rephrasing, I trust, of whatever this is, so that we can then know what it is about.

Q I think you have already told us that one of

your functions was to modify the program where appropriate, is that correct?

A That's correct.

Q While you worked on that audit program in that capacity did you have occasion to modify the program to include any steps for unbilled accounts receivable?

A I did not.

Q I ask you, do you recall during the time that you worked on that audit that there was any mention or work, to your knowledge, having to do with unbilled accounts receivables?

A There was not.

Q Would you please turn to Page 1535 and 36 of Exhibit 4C.

Is that a portion of the trial balance?

A It is.

Q For the year ended August 31, 1968?

A It is.

Q That portion of it, is it set up in your handwriting?

A A large portion of it is, yes.

Q Can you tell from the date when you set that up?

A The work paper is dated October 14, 1968, which

is most likely the date that I set it up.

Q Also on that page are adjustments, is that correct, to the trial balance?

A There are.

Q Are those entered in other people's hand?

A Some of them.

MR. STILLMAN: Excuse me. I don't mean to interrupt you, what page is that?

MR. VELIE: 1535, 1536.

THE COURT: And the exhibit number?

MR. VELIE: 4C.

Q Can you tell if there are adjustments in that binder on that page referring to unbilled accounts receivables?

A There are.

Q Are those in somebody else's handwriting or in yours?

A Yes.

Q I can't understand your answer. Is it in somebod, else's handwriting?

A Yes.

Q Was that, if you know, done after you left?

A There is no indication on this paper on which I could tell the date of that posting.

Q I believe you have told us that you knew of no work being doneon unbilled accounts receivables, is that correct?

MR. STILLMAN: Repetitious.

MR. MARTIN: Objection, your Honor, to the constant repetition of prior testimony.

THE COURT: I would agree that this has been asked and answered.

MR. VELIE: Very well.

Q The adjustments, in any event, were made some time after you set up the page, is that correct?

MR. STILLMAN: I object to the form of the question.

THE COURT: No,I will allow that.

THE WITNESS: Would you please repeat the question?

Q Were the adjustments made some time after you set up the page?

A Yes.

Q Did you have occasion to travel out of the country some timein the year 1969?

A I did.

Q Do you recall when you returned?

A To the best of my recollection, it was approx-

imately the middle of August 1969.

Q August of 1969?

A Yes.

Q Do you recall doing some work on the proxy statement for National Student Marketing after you returned?

A I do.

Q Do you recall in particular -- you may set aside 4C now if you wish.

Do you recall having occasion on or about the evening or night of August 14 to spend virtually all night at the Peat, Marwick, Mitchell office in Washington?

A I recall having spent one complete night at the offices. I don't recall the specific date.

Q Some time after you returned in August, is that the idea?

A That is correct.

Q What were you doing there?

A I was acting more or less as anchor manfor Mr. Natelli, who was at the printer's office, in case there was any information which he required out of the work papers.

Q Did you receive a telephone call that night, if you recall?

A To the best of my recollection, there was one

call that night.

Q Are you able to tell us who called and what was said?

A I believe it was Mr. Natelli who called me that evening.

Q Do you remember what you said to him and what he said to you?

A At this point I am afraid I can't remember what was said over the phone.

Q In your capacity as working with respect to that proxy statement, are you able to tell us who it was who inserted numbers and so on from the work papers into the proxy statement figures for National Student Marketing?

MR. STILLMAN: I have some difficulty with the form of the question, your Honor.

THE COURT: I must say I am going to sustain the objection. You are going to have to specify.

What documents are you talking about?

MR. VELIE: Very well.

Q Mr.Johnston, there were various work papers relating to preparation of the proxy statement, is that correct?

A Yes.

Q Calculations of various kinds leading to

figures which were to be published in the proxy statement, is that correct?

A Yes.

Q Do you recall whose function it was to take numbers from the working papers and actually do the numbers in the proxy statement drafts, place them in there as being the numbers which were to appear?

A My contact with the proxy statement and the work that was being done on the proxy statement, to my knowledge, Mr.Scansaroli was inserting the numbers in the proxy draft.

Q I place Government Exhibit 21 before you, Mr. Johnston, and ask you this question:

I am at Page 3120 of Exhibit 21, gentlemen.

Are you able to tell us whose handwriting appears at Page 3120, if you know?

A I believe this is Mr. Natelli's handwriting.

4A

MR. VELIE: Gentlemen, I offer page 3120 at this time.

MR. MARTIN: Your Honor, this is a matter I discussed with Mr. Velie before and told him I would like an opportunity to take up with the Court outside the presence of the jury.

I don't think that it lends anything to this witness' direct examination other than the fact that he has identified Mr. Natelli's handwriting.

THE COURT: If I understand you --

MR. VELIE: That's all right with me.

THE COURT: -- you would like to defer on the question of whether or not this page is admissible?

MR. MARTIN: That's right.

THE COURT: All right. Is that all right with you, Mr. Velie?

MR. VELIE: Absolutely.

THE COURT: All right.

MR. MARTIN: There is no question it is in Mr. Natelli's handwriting.

Q Do you recall having a further function in connection with the year end 1969 audit at National Student Marketing Corporation?

A The calendar year ended --

Q No, sir, the fiscal year which ended 8-31-69.

A I did.

Q When, if you can fix the time, were you working on that audit work?

A Well, I was working on this subsequent to August 31, 1969.

Q Were you working on it in October, if you recall, of 1969?

A I believe I was.

Q Subsequently, in October of 1969 was Mr. Scansaroli still working at Peat, Marwick, Mitchell and Company?

A Mr. Scansaroli had left Peat, Marwick, Mitchell somewhere about that period of time.

Q Where did he go?

A He went to work for National Student Marketing.

Q Did you have any function with respect to confirmations in the 1969 audit?

A I did.

Q Tell the jury please what confirmations are.

A A confirmation can -- it can take several forms. It is an attempt to verify an item through an outside source, a third party.

Q Sort of a little investigation to see if things are what they appear to be, is that right?

A That's correct.

Q Did you do any confirmations of unbilled accounts receivables at that time?

A I did.

Q How did you carry out your confirmation task, sir, what was it that you did, with respect to the unbilled accounts receivables?

A With the unbilled accounts receivables, we attempted to obtain positive confirmations on 100 per cent of the unbilled receivables.

Q You tried to make sure that 100 per cent of them were okay, is that correct?

A That's correct.

Q What procedure did you follow?

MR. MARTIN: Objection, your Honor. We kept getting these summaries of the witness' testimony. I think the witness speaks quite clearly. What he says is this. I see no reason for Mr. Velie to keep repeating what the witness says and I object to that procedure.

THE COURT: I assume he will take heed from now on.

Next question.

Q What procedure did you follow?

A Well, the first step was to draft up a format

which we wanted to use to confirm these unbilled receivables.

Q What is a format?

A This is the form of the correspondence that we want to use.

Q Were you confirming these in writing?

A Yes.

Q Did you do any telephoning to confirm?

A I did not.

Q What did you do with the format or the written confirmations that you got up, designed?

You prepared a format, I believe you have told us, is that correct?

A That's correct.

Q What did you do with the confirmations which you had prepared?

A Well, once the confirmations were prepared we kept those under our control until they were placed in the mail.

Q Will you explain to the jury what that means, keeping the conformations under your control?

A Well, either myself or one of my assistants would have hand carried those confirmations and see that they were placed in the mail.

Q How were they to be returned?

A They were returned directly to the Peat, Marwick,

Mitchell offices.

Q Rather than let's say, to the client, National Student Marketing, is that the idea?

A That's correct.

Q Had you had any discussions with anybody as to these procedures?

A I had discussed the procedures which we were going to follow with Mr. Natelli.

Q Tell us if you can the approximate date of your discussion with Mr. Natelli.

A I couldn't give you an approximate date on that.

Q Was it prior to your having carried out the confirmation procedure?

A Yes.

Q Was anybody else present, if you recall?

A To the best of my recollection, no.

Q Tell us then what Mr. Natelli said to you and you said to him at that time?

A Well, we had discussed the procedures which we wanted to follow inconnection with our audit of the unbilled receivables.

Q See if you can tell us what Mr. Natelli was saying and what youwere saying, rather than just the subject matter.

A Mr. Natelli indicated that he wanted to follow a

procedure of positive written confirmations on the unbilled receivables. There were several other audit steps which he wanted us to perform in connection with these unbilled receivables.

Q What is a positive confirmation?

A A positive confirmation requests a written reply. If it is -- a written reply, period, as opposed to a negative confirmation, in which you would only request a reply if there is something wrong with the information in the confirmation.

Q This is to provide you with a greater degree of certainty thatwhat you are confirming is so, is that correct?

A That's correct.

Q Did Mr.Natelli tell you why he wanted you to use this certain method?

A Mr. Natelli explained that certain contracts which had -- were on the books as of August 31, 1968, had subsequently had to be written off because there had -- because they were not valid contracts.

Q Did he explain to you what confirmation system had been used in 1968?

A To the best of my recollection, we didn't discuss what had been done in 1968.

MR. MARTIN: Your Honor, I hate to be the one to

raise this, but I can't hear the witness.

Could you speak up, Mr. Johnston, please.

THE WITNESS: Yes, sir.

A To the best of my recollection, I don't believe we discussed what audit procedures had been followed in 1968.

Q Did there come a time when you had occasion to work on a so-called comfort letter?

A There did.

Q Would you please tell the jury what a comfort letter is?

A A comfort letter is a -- it is a letter of assurance which is normally provided subsequent to a time when you have completedyour work on a set of financial statements in which you take a more current look or what has taken place with the company from the date of the financial statements to see that there -- that nothing has taken place which would affect the financial statement.

Q All right.

Do you recall who asked you to work on the comfort letter question?

A To the best of my recollection, I believe Mr. Natelli.

Q Mr. Natelli?

A Right.

Q Was this a comfort letter with respect to the closing of the Interstate National Corporation acquisition by National Student Marketing?

A That's correct.

Q Do you recall the date when it was to close?

A I don't recall the date.

MR. VELIE: May we stipulate that is October 31, 1969?

MR. MARTIN: I have no problem with that.

MR. VELIE: Counsel and I agree that the closing was to be October 31, 1969.

Do you recall when you spoke with Mr. Natelli with respect to the comfort letter?

A I cannot recall the exact date.

Q Let me ask you this: Was it an unusually short time prior to the closing --

MR. MARTIN: I object to the characterization, your Honor.

THE COURT: Yes. I sustain that as to form.

Q Was it a short or long time before the comfort letter was to come out?

A To the best of my recollection, I believe I learned of the comfort letter approximately a weak before the letter was due.

Q In your experience and in your view, was that an unusually short time --

MR. STILLMAN: I object to that, your Honor. Can we perhaps lay a foundation as to how many comfort letters and whatever?

THE COURT: I would think that maybe that might not be a bad idea.

MR. MARTIN: I'm sorry, your Honor.

THE COURT: I said I would agree. We don't know if he worked on any others. So we have to know that before we get to this, Mr. Velie.

Q Are you a certified public accountant?

A I am.

Q How long have you been a certified public accountant?

A I passed the November 1968 exam.

Q By my calculations that is roughly six years, is that right?

A That's correct.

Q And before that were you an accountant before you were certified?

A I was.

Q For how long?

A I have been working in accounting since 1963.

Q Since 1963?

A Yes.

Q Is that 11 years?

MR. STILLMAN: We know it is 11 years, Mr. Velie.

THE COURT: Yes, dispense with that.

Q Tell us, did you study accounting in school?

A I did.

Q Where was that?

A American University.

Q Did you major in accounting?

A I did.

Q Did you receive a degree?

A I did.

Q You had occasion to work on matters concerning comfort letters other than this one time? Have you had that opportunity?

A I believe there was one other engagement which I had worked on which comfort letters were involved.

Q You heard about comfort letters before now in your studies and in your experience as an accountant, is that correct?

A That's correct.

MR. MARTIN: I think I have heard enough, your Honor, to say I object to it.

MR. VELIE: I haven't quite finished.

MR. MARTIN: He's had one comfort letter before that.

MR. VELIE: He's also had --

THE COURT: Gentlemen, please. Let's not argue.

You say you want to ask another question. Please do.

Q Apart from the one that you yourself worked on, have others been worked on either under your supervision or to your knowledge?

A Would you please repeat the question. I am not sure I understand it.

THE COURT: I think it might be wise if you rephrase it, too. I don't blame the witness. I am a little confused too.

Q Apart from the one that you have told us you worked on yourself, were you aware of other comfort letters in the course of your work experience and studies?

A I think, as I have already stated, I know what a comfort letter is.

Q Yes.

A And, yes, Peat, Marwick handled other clients in which comfort letters were involved.

Q Were you aware of the work going on around you with respect to those comfort letters, whether or not you yourself worked on them?

A I'm afraid I don't understand your question.

As I have already said, I am aware that Peat, Marwick had other clients in which comfort letters were

involved.

Q Did you talk to the accountants who were working on those from time to time?

MR. MARTIN: I object.

THE COURT: Sustained. I think we have heard enough, Mr. Velie. I will sustain the defense's basic objection.

Q Did you find that you had ample time in which to do your comfort letter review in the amount of time given to you?

MR. MARTIN: Objection.

THE COURT: First of all, we don't know what he did including review. I don't think that's an appropriate question at this point.

MR. VELIE: Very well.

Q What was it that you did?

A Well, at this point in time I was working on the fiscal year August 31, 1969 audit. In relation to the comfort letter itself, I went to the work which we had done, the work on the August 31, 1969 audit and reviewed the information which we had put together at that point in time to determine if anything had taken place which should be taken into consideration of the comfort letter.

Q All right.

Tell me, what was it, if anything, that Mr. Natelli told you when he asked you to do the comfort letter?

A To the best of my recollection, Mr. Natelli indicated that we had the comfort letter to put together and asked if anything had taken place since May 1, 1969 which affected the financial position of National Student Marketing.

A All right. Do you recall if he said anything else?

MR. MARTIN: Could I have what the witness said in response to that, your Honor?

THE COURT: You have to allow the questioner a free hand here.

MR. MARTIN: I object to the form of the question. I thought the proper form generally was, what did he say to you and wha t did you say to him?

THE COURT: I got the point, Mr. Martin. Please understand me. I am saying at this point if the questioner wishes to do something else, you will still get your chance, in any event, we may get to it. Let's move along, Mr. Velie.

MR. VELIE: Very well.

Q What was it that yousaid to him and he said to you? Give us the entire conversation when he asked you to do the comfort letter.

A I can't recallthe specifics of the conversation.

Q Give us what you do recall.

A To the best of my recollection, when Mr. Natelli mentioned the comfort letter to me and asked if there was anything which had taken place since May 1 -- since May of '68, which affected the financial statements --

Q May of '69?

A I beg your pardon, '69.

Q Right.

A There were certain items which I felt we should consider mentioning in the comfort letter.

Q Let me see if we are talking about the same conversation. I believe I had asked you your conversation with Mr. Natelli when he asked you to do the comfort letter.

A Right.

Q All right. Are you talking about that time?

A I am.

Q All right. What did Mr. Natelli say to you and what did you say to him? Had you found adjustments by that point?

MR. STILLMAN: I am a little confused, your Honor.

MR. VELIE: So am I.

THE COURT: One thing at a time, Mr.Velie might minimize the confusion.

MR. VELIE: Very well.

Q Tell me, were there other conversations with Mr. Natelli concerning this comfort letter between when he assigned you and until after you finished your work on it?

A I can't recall any other direct contact that I

had with Mr. Natelli.

Q So you had one conversation with him that you recall?

A Right.

Q Tell us what you said to him and what he said to you?

A I would have to give you a general --

Q Any way you like.

A -- summary of what was said to the best of my recollection.

Q Fine.

A Mr. Natelli indicated that we had the comfort letter to put out and he asked if there was anything which had taken place since May of 1969 which affected the financial position of National Student Marketing.

Q All right.

A As I recall, when he first mentioned this to me, there were certain items which I felt we should give some consideration to in putting together the comfort letter.

Q All right. What did he say?

A Well, I don't recall that we went into specifics at that point.

THE COURT: Let me see, Mr. Johnston.

You say that Natelli asked you to advise as to

whether or not there was anything that happened since the end of May of '69 that might affect the financial condition of the company. You then tell us that you mentioned certain items.

Can you tell us what those items were that you called to the attention of Mr. Natelli?

THE WITNESS: The items which I thought we should give some consideration to were -- there were certain unbilled receivables which had been written off on clients' books in August of 1969. There were some charges against additional paid in capital for acquisitions which had never taken place.

The third item was an adjustment of deferred costs in relation to the PI programs.

Q Is it your testimony that you told these things to Mr. Natelli on the day that he assigned you the task?

A No, sir. What I have said previously is that I don't recall having discussed these specific items with Mr. Natalli at that time.

Q I see.

A But that when he indicated that we had to put out a comfort letter and take a look at any transactions which may affect -- maybe should have affected the financial

position of National Student Marketing at May 1969, these were items which I felt we should give some consideration to in putting together the comfort letter.

Q The question I have for you is, that was your consideration and what you felt.

Did you tell Mr. Natelli in your conversation with him of y our then feeling on the day that he assigned you

A I seem to have a hard time getting this point across.

Q I am sorry.

A I do not recallhaving discussed these items with Mr. Natelli at that point in time.

Q Fine.

THE COURT: Did there come any point in time that you did mention these to Mr. Natelli?

THE WITNESS: I do not recall having talked directly with Mr. Natelli about these items.

THE COURT: Did you talk to anybody about them?

THE WITNESS: Yes, sir, I talked with Mr. Cologna.

Q Who is Mr. Cologna?

A Mr. Cologna was, I believe, at that point the manager in charge of the National Student Marketing engagement

Q All right. What did you tell Mr. Cologna?

A Mr. Cologna and I discussed these items which

we felt should be mentioned in the comfort letter.

Q All right.

Did he say something to you at that time?

MR. MARTIN: Your Honor, I think I willobject on the hearsay ground.

THE COURT: Yes, I would think that is probably correct, Mr.Velie.

MR. VELIE: Very well.

THE COURT: In other words, as I understand your position now, Mr. Johnston, you say that you recall Natelli directing you to participate in drafting of a comfort letter, you recall further that you thought there were certain items which were important as affecting the financial condition of this corporation, but you say you did not mentio those to Mr. Natelli but rather you mentioned them to this ma called Colo na, is that substantially correct now that you have thought this over?

THE WITNESS: That is correct.

THE COURT: All right.

THE WITNESS: I cannot recall discussing the specifics with Mr. Natelli.

THE COURT: Just to make sure, I want to know one more time.

Did you discuss in words or in substance

generally the three matters which you just summarized for the Court and the jury with Anthony Natelli?

THE WITNESS: To the best of my recollection, I d id not.

THE COURT: All right.

Q Can you tell us, if you can recall, or have you told us the amounts of those three adjustments?

MR. STILLMAN: As they were ultimately determined?

Q You determined that there should be three adjustments, is that correct?

THE COURT: Mr.Velie, I am going to treat that as an objection. You are missing a few things still.

Let's regroup here. Think about what this man has just told us. Start afresh.

nd 5B

Q Did you do some work after you spoke to Mr. Natelli?

A I did.

Q Did you find any areas which you thought should require adjustment?

A I did.

Q What were the areas?

A These areas were -- there were some unbilled receivables which had been written off on the client's books in August of 1969, there were deferred costs relating to the PI programs, there were some costs in relation to acquisitions which had never been consummated which were charged against additional paid in capital.

Q Do you recall the size of the items in dollar terms that you found?

A As I recall, the unbilled receivables amounted to 200,000, the deferred costs amounted to 500,000, and the charges to additional paid in capital amounted to 84,000.

Q I now show you Government Exhibit 34 for identification at Page 3276. First of all, can you identify the binder?

A This is the liability and P & L binder for the August 31, 1969 audit.

Q I have directed you to Page 3276. Is that a

page that you performed some work or analysis on?

A It is.

MR. MARTIN: Could we have a minute, Mr. Velie, to get that page?

MR. VELIE: Yes, of course.

MR. STILLMAN: If I understand our previous workin arrangement on these binders, if I have any objection I am to speak as a particular page is identified. Of course, I have no objection to the authenticity of Government Exhibit 34. I do object to the relevance of this testimony insofar as it relates to Mr.Scansaroli.

THE COURT: Since I am not privy to what this page says I am unable to intelligently rule on your objection, if that is what it is.

MR. VELIE: Perhaps a question will straighten ~~t~~his out.

THE COURT: ~~Ike's~~ Let's see.

Q Mr. Johnston, is Page 3276 a schedule you used in arriving at the comfort letter adjustment concerning unbilled accounts receivables?

A It is.

MR. VELIE: At this point I offer the page and would ask you to read to us your findings with respect to unbilled receivables. Tell us first, did you find that

certain unbilled receivables should be declared bad in a comfort letter?

MR. STILLMAN: Your Honor, the problem I have with this, I have been sitting listening to the comfort letter. I have an idea what happened at that period of time. The evidence has shown Mr.Scansaroli was no longer working for Peat, Marwick, Mitchell. I object to this insofar as it relates to him.

THE COURT: May I ask, Mr. Johnston, is there any indication on Page 3276 when you did the work and performed the adjustments which apparently are shown there?

THE WITNESS: This work paper is dated 10/24/69.

THE COURT: All right. Now, Mr.Velie, are you offering this page as to each defendant or one defendant? What are you doing? Would you mind enlightening me?

MR. VELIE: I believe it is relevant as to both defendants, your Honor.

THE COURT: Sir?

MR. VELIE: I believe it is relevant as to both defendants.

THE COURT: I am going to receive it as to the defendant Natelli and I am only going to receive it subject as to Scansaroli because you are going to have to advise me as to just why this is.

MR. VELIE: Very well.

Q Have you listed there the contracts which you found to have been written off and should be included as part of the comfort letter adjustment?

A Well, this is a listing of the contracts which had been written off on the client's books.

It is an analysis of the figures in the client's books.

Q And you listed them there in your schedule, is that correct?

A That's correct.

Q And used that schedule to determine what should go into the comfort letter, is that correct?

A That's correct.

End 6A

Q Do you see there whether or not you listed a contract for Schick?

A I have a listing for Schick Safety.

Q In what amount?

A 30,000.

Q When was that contract booked, if it indicates there.

A It was on the client's books as of August 31, 1968.

Q Do you have listed there a contract with a company called Bizaar?

A Bizaar Products.

Q In what amount, sir?

A $5,580.

Q When was that booked by National Student Marketing, if you can tell?

A It was on their books at August 31, 1968.

Q Do you have a contract for a company called Gossard?

A Yes.

Q That is on your schedule?

A Yes.

Q In what amount, sir?

A 53,774.

Q Was that on the books at August 31, 1968 also?

A It was.

Q A contract for a company called Faberge?

A Yes.

Q In what amount?

A 53,775.

Q Was that on the company's books at August 31, 1968?

A It was.

Q A contract for a company called Campana?

A Yes.

Q The amount?

MR. MARTIN: The contract amount?

MR. VELIE: Contract amount.

A The contract amount was -- which one are we on?

Q Campana.

A 53,775.

Q Was that on the company's books in August 31, 1968?

A It was.

Q Do you see any contracts there for Barnes-Hind Corporation?

A Yes.

Q In what amounts?

A 47,850.

Q Do you see another or is that the only one you have?

A There is a second one here for 26,200.

Q Were those two on the company's books at August 31, 1968?

A They were.

THE COURT: Incidentally, let me correct a ruling I made here a moment ago. I am receiving this portion of Government's 34 which has been offered so far as to both defendants. Exception to you and your client, Mr. Stillman.

MR. STILLMAN: Thank you, your Honor.

Q Do you find a total on that page of the contracts which you found should go into the comfort letter adjustment? Have you totaled them there?

A The whole page?

Q The ones that you felt should be adjusted in the comfort letter, have you totaled those?

A Yes, I took a total rounded to the thousand.

Q How much?

A 372,000.

Q Are there other contract write offs shown on that page?

Are there other contract write offs apart from the comfort letter adjustments?

A Yes.

Q I show you Government's Exhibit 52 for identification.

Are you able to identify that, sir?

Let me show this to counsel, Mr. Johnston.

THE COURT: Mr. Velie, you are showing counsel and the witness Government's 52.

MR. VELIE: Yes, your Honor.

THE COURT: For identification?

MR. VELIE: Yes, your Honor.

Q Are you able to identify Government's Exhibit 52 for identification?

A Yes.

Q What is it?

A I believe this was a work paper which we had prepared in putting together figures for the comfort letter.

Q Can you tell us whose handwriting that is? Is it yours?

A Some of it is mine, yes.

Q Is some of it somebody else's?

A Yes.

Q Whose?

A I believe it is Mr. Cologna's.

Q Mr. Cologna was your supervisor in the comfort

letter function, is that correct?

A That's correct.

MR. VELIE: I offer it.

THE COURT: Is there any indication of the date when that was prepared, Mr. Johnston?

THE WITNESS: No, there is not.

THE COURT: Do you have any recollection as to the date or period when that was prepared? For example, was it prepared within the week that you have already told us about?

THE WITNESS: Yes, sir, it was.

THE COURT: All right. The latter part of October, in other words.

THE WITNESS: Right.

Q Was it prepared before October 31, which was the date of the closing?

A Yes.

Q Did you and Mr. Cologna or you or Mr. Cologna prepare a comfort letter in draft?

A I believe Mr. Cologna did.

Q Was that also prior to the closing of October 31?

A Yes.

Q If you recall, was it the day before?

A That I couldn't say.

MR. VELIE: There is a pending offer.

(In open court, jury present.)

THE COURT: All right, Mr. Velie.

MR. VELIE: There's a pending offer, your Honor, Government's Exhibit 52.

THE COURT: Any objection to the proferred 52 for identification?

MR. MARTIN: I have no objection with the exception of one tag that appears thereon, your Honor. It was not there in 1969.

MR. VELIE: The tag is not offered.

THE COURT: Then I would suggest you remove it.

MR. VELIE: Very well.

THE COURT: All right, 52 will be received.

xx (Government's Exhibit 52 for identification, received in evidence.)

Q Mr. Johnston, I'm going to put Government's Exhibit 34, portions of which are now in evidence, back in front of you and ask you to turn to page 3276, which is the page you have been telling us about.

That page totals, does it not, certain of the 1968 unbilled accounts receivables which were written off and scheduled thereby you, is that correct?

A That's correct.

Q What is the total of 1968 contract write offs

(In open court, jury present.)

THE COURT: All right, Mr. Velie.

MR. VELIE: There's a pending offer, your Honor, Government's Exhibit 52.

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Q Mr. Johnston, I'm going to put Government's Exhibit 34, portions of which are now in evidence, back in front of you and ask you to turn to page 3276, which is the page you have been telling us about.

That page totals, does it not, certain of the 1968 unbilled accounts receivables which were written off and scheduled thereby you, is that correct?

A That's correct.

Q What is the total of 1968 contract write offs

shown on that page?

A Approximately 732,000.

Q Turn place to page 3242. There's a marker there for you.

Is page 3242 another page which you prepared?

A It is.

Q It shows certain additional contracts, 1968 contracts, also written off, is that correct?

A That's correct.

Q What is the total shown on that page?

A The figure I gave you a minute ago, I already included a portion of this page.

Q All right. See if you can correct this and give us a grand total. Perhaps that's the simplest thing to do.

A I believe the grand total is approximately 1.4 million.

Q $1,400,000 of 1968 contracts written off as of the date of that paper at least, is that correct?

A That's correct.

Q What is the date of that paper?

A One is 10-26-69. The other is 10-24-69.

Q The write offs on 3242, page 3242, can you tell when they were written off?

A No, I cannot.

Q Can you tell what contracts they are?

A Yes.

Q Please do.

A Clairol, Cheesborough Ponds, Ban Deodorant.

Q All right.

Are there dates indicating the date of write off of the contracts on page 3276?

A There are.

Q I believeyou have told us that the ones in the comfort letter adjustment were written off in August of 1969, is that correct?

A That's correct.

Q What about the others, when were they written off?

A February '69, April of '69.

MR. VELIE: You may inquire, gentlemen.

xx CROSS EXAMINATION

BY MR. MARTIN:

Q Good morning, Mr. Johnston.

A Good morning.

Q Mr. Johnston, you and I have met before, have we not, sir?

A We have.

Q On more than one occasion?

A On several occasions.

Q In the presence of Mr. Stillman and others?

A That's correct.

Q Mr. Johnston, in August of 1969 you were yourself a certified public accountant, is that correct?

A That's correct.

Q I want to ask you, sir, some questions about your work on the audit for the period ending August 31, 1968.

You were asked, Mr. Johnston, by Mr. Velie about the audit program and whether you had any responsibility for tailoring the audit program to meet the specific needs of National Student Marketing Corporation.

Do you recall that, sir?

A I do.

Q On the August 31, 1968 engagement were you the person in charge of that audit?

A I was the senior on the job.

Q There were other people on that job above you, is that correct?

A That's correct.

Q Was your responsibility for working on the audit program limited primarily to those areas of the audit that were assigned to you to do?

A That's correct.

Q You were not assigned to the unbilled receivable audit, is that correct?

A That's correct.

Q And do you recall, sir, whether prior to the time you ceased work on the audit of August 31, 1968 you had occasion to have a conversation with Mr. Kurek in which he toldyou that there was some money that was not on the books of the National Student Marketing Corporation?

A There was such a conversation.

Q There came a time you told us where you spent a night in the offices of Peat, Marwick & Mitchell in Washington while others were at the printer, is that correct?

A That is correct.

Q Did you also tell us that on that occasion you had at least one phone call that you remember from Mr. Natelli

A Yes.

Q Was that in the middle of the night, sir, as you recall it?

A It was.

Q How are you able to recall some five years later that that call came in the middle of the night?

A Because I was asleep on his couch when the ~~call~~ came.

Q Prior to the time that you were asleep on his couch, earlier that evening you had been working at the Peat, Marwick, Mitchell office, is that correct?

A That's correct.

Q Were others working at that office with you?

A They were.

Q Was one of those people Douglas Oberlander?

A I believe he was one of those.

Q Mr. Johnston, you tell us, sir -- one further

question on that subject.

The night that Mr. Natelli and Mr. Scansaroli were at the printer's, did you have in the Peat, Marwick office all of the work papers that related to the proxy?

A I did.

Q Can you tell us, sir, while you were with Peat, Marwick & Mitchell, when footnotes were being prepared to a financial statement that had both text and then there were numbers inserted in that text, and if a partner drafted a footnote, would he generally put in the numbers or would that be done by somebody else?

A That would normally be done by somebody else.

Q That would be somebody below him on the staff, is that correct?

A That is correct.

MR. MARTIN: Mr.Velie, could we have all of the August 31, 1969 work papers?

(Pause.)

MR. MARTIN: Your Honor, I would like to have produced by the Government, since all the Peat, Marwick papers have been turned over to the Government, the miscellaneous work paper binder for the period August 31, 1969. I will proceed by marking a portion, your Honor, of that that I have

MR. VELIE: It will help us if you gave us the

stencil numbers.

MR. MARTIN: 8671, theonly portions I am directly concerned with at this time, through 8674.

(Pause.)

MR. MARTIN: Can we mark this, please, as the next Natelli exhibit.

xxx (Defendant Natelli Exhibit N was marked for identification.)

Q I show you, sir,what has been marked as Natelli Exhibit N for identification and ask you if you can identify the handwriting of the note that appears on that exhibit?

A It appears to me like Mr. Natelli's handwriting.

Q And attached to that note, and that note is addressed to by Bill -- do you know who Bill is?

A Most likely Bill Colonna.

Q And he was the supervisor in charge of the 8/31/69 audit, is that correct?

A That is correct.

Q And attached to that exhibit are certain pages. Sir, can you identify those?

A Yes. This is the tailored audit program for the unbilled receivables and for the deferred costs on the PI program.

Q And so everybody --

MR. VELIE: Excuse me. Do you mind showing t hat to me?

MR. MARTIN: Be with you in just a moment.

MR. VELIE: Very well.

Q The unbilled receivables and the deferred costs, those were the two major items that went into your comfort letter, is that correct?

A That is correct.

MR. MARTIN: Your Honor, at this time I offer Defendant Natelli Exhibit N for identification in evidence. I will show it to Mr.Velie.

(Pause.)

THE COURT: What would you call this document that you have just identified?

THE WITNESS: That is a tailored audit program.

THE COURT: Tailored audit program.

MR. VELIE: Just one second.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr. Johnston, see if you can tell us when this thing was prepared, Natelli Exhibit N.

A There are no dates on it.

Q Are you able to tell us anyhow when it was prepared?

A This note?

Q Yes.

A No,I can't.

Q Have you ever seen the original of which this is a copy before, if youcan recall.

MR. VELIE: I will object at this time and perhaps wait for another witness who can tell us something about it.

MR. MARTIN: One further question under voir dire, if I may, your Honor.

End 7B

BY MR. MARTIN:

Q The note which appears on the top refers, does it not, to the attached schedule, is that right?

MR. VELIE: YOur Honor, this witness has never seen this before. The note refers towhatever it refers to. I don't believe he can really tell us anything about it.

MR.MARTIN: Your Honor,perhaps it would be helpful if I let the Court look at the exhibit.

THE COURT: I am going to sustain the objection simply because at this point I don't see that it bears any relation to the witness' testimony, except he has been able to identify the document, and I certainly make this ruling without prejudice to renewal at some later time on the defense case or whenever.

Q Without covering the first page,sir, the attachments, wouldyou tell the ladies and gentlemen of the jury what they are?

MR. VELIE: Excuse me. Are you showing him N again?

MR. MARTIN: That is correct.

MR. VELIE: I believe that we have already heard that he has never seen this before and therefore I object to it.

MR.MARTIN: That is what I am trying to clarify,

Mr. Velie.

Q Have you seen,sir, did you see at the time -- thi is a copy -- the originals of those last three pages of Exhibit N, which is a four-page document?

A I have.

Q Can you tell the ladies and gentlemen of the jury what those pages are?

MR. VELIE: Which pages now?

MR. MARTIN: Everything from the cover down.

MR. VELIE: You mean from 72 down?

MR. MARTIN: That is correct.

A This is an audit program which was developed specifically to review the unbilled receivable type of contracts and the deferred cost on the PI program on National Student Marketing's books.

Q How did that schedule come to be prepared, that program?

A This is a result of my discussions with Mr. Natelli as to what audit steps we wanted to perform in connection with our 8/31/69 audit of the unbilled receivable type of programs and the PI programs.

MR. VELIE: Excuse me. Do I understand that you now recognize the document?

THE WITNESS: I recognize the attached pages.

MR. VELIE: I have no objection to them at all.

MR. MARTIN: I don't want to fool Mr.Velie. He does not recognize the top page, your Honor.

MR. VELIE: I didn't understand that. Whatever he recognizes is fine with me.

MR.MARTIN: You do object to the other page.

MR. VELIE: To the top page. He has never seen it. There is no point in putting it in now.

MR. MARTIN: Your Honor, I will renew the offer of the whole thing, since the top page relates back to the dbcument he prepared.

THE COURT: May I see this again.

MR. MARTIN: Surely, your Honor.

THE COURT: The witness apparently now says he can recall seeing this.

This note which is the first page, Mr.Johnston, you say that you recognize that in the hand of Mr. Natelli, is that so?

THE WITNESS: That is correct.

THE COURT: But you have never seen it before?

THE WITNESS: Not to the best of my recollection.

THE COURT: Do you know about when it was written? I assume you cannot tell us that.

THE WITNESS: No, I cannot.

THE COURT: I think at this stage I am going to agree with the Government. N with the note or first page redacted will be received without prejudice to a renewal of the note later.

MR. MARTIN: Could I make one comment, your Honor?

THE COURT: I would rather you not.

MR. MARTIN: Do we have the original binder here, the one which this was in?

Perhaps for simplicity we will have this marked, if I may, your Honor, this entire binder, as N-1.

xxx (Defendant Natelli Exhibit N1 was marked for identification.)

Q I put before you what has been marked, Mr. Johnston, as Natelli Exhibit N1 for identification and ask you, sir, can you identify what that document is?

Without getting into specific documents, let me ask you, are those part of the work papers for the audit of August 31, 1969?

A They do appear to be miscellaneous work papers for that audit, yes.

Q Was it the regular course of business for Peat, Marwick & Mitchell to prepare work papers during the conduct of their audit?

A It is.

MR. VELIE: I believe we have already stipulated that these are business records.

THE COURT: Yes. Mr. Martin, this is not the problem. I would be glad to enlighten you, but I really think you know what the problem is. However, if you would like me to repeat myself, if you and your fellow counsel come to the side bar I will be glad to repeat myself.

MR. MARTIN: No, your Honor. I just wanted to lay a business record foundation. If your Honor doesn't want to take it as that --

THE COURT: I don't think there is any dispute. I think you and Mr. Stillman have made that clear, I think now Mr.Velie has made that clear. These come from the files of Peat, Marwick. No doubt about that, is there, Mr. Velie?

MR. VELIE: None at all, your Honor. We have stipulated to it.

THE COURT: Fine. Let's march on and finish the cross-examination. There will be no prejudice to offering this later when we find out when the thing was prepared and so on.

MR. MARTIN: I wil l then offer the portion without the top, the pages that the witness has identified.

THE COURT: I have already indicated that that is received. N with the first or so-called note page

redacted is received, there being no objection by the United States.

xxx (Defendant Natelli Exhibit N was received in evidence.)

Q You say, sir, that that document was prepared after a conversation that you had with Mr. Natelli, is that correct?

A That's correct.

Q In that conversation did Mr. Natelli tell you that a substantial number of the contracts entered into in the prior year had been written off during the year ended August 31, 1969?

MR. VELIE: I object to the leading at this point of this witness. There is no hostility or lack of recollection shown.

MR. MARTIN: He is a Government witness that I am cross examining, your Honor.

THECOURT: I am frank to say that I don't understand the question. Do you understand the question, Mr. Johnston?

THE WITNESS: I would like it to be repeated.

THE COURT: Certainly.

Q Prior to the time you prepared that document you had a conversation with Mr. Natelli, is that correct?

A That's correct.

Q In that conversation did he tell you that a substantial amount of the unbilled receivables that had been recorded at August 31, 1968, subsequently had to be written

off?

A He did.

Q Did he tell you, sir, that he wantedyou to prepare a program that would take a hard look at the unbilled receivables on National Student Marketing's books at August 31, 1969?

A He did.

Q And is that the program you prepared pursuant to that?

A It is.

Q Is that program all in your own hand, sir?

A It is not.

Q Are there portions in the hand of Mr. Natelli?

A There are.

Q Would you simply identify those portions. I see the steps are numbered. Can you give us the numbers that represent Mr. Natelli's handwriting? Would the original be more helpful to you, sir?

A I think I can make this out. Steps 8, 9 and 10 of the fixed fee contract program are in Mr. Natelli's handwriting?

Q You told us about one conversation with Mr. Natelli before you prepared that document. Did you have another conversation with him after you prepared it in which you showed

him the steps that you were outlining.

A There was.

Q Was it at that point that he suggested and added additional steps?

A Yes.

MR. MARTIN: May I read, your Honor, from defendant Natelli Exhibit N in evidence to the jury.

THE COURT: Sure.

xx (Defendant Natelli Exhibit N read to the jury.)

BY MR. MARTIN:

Q Is that the program you then followed, sir, in reviewing the unbilled receivables?

A That's correct.

Q I believe Mr. Velie referred you in your direct examination to page 3276, sir. You want to take a look at page 3276 again.

Is it fair to say, sir, that you came to prepare what is now page 3276 of Government's Exhibit 34 as part of the steps in following out the program to review unbilled receivables?

A This was not -- this work paper was not a direct result of following the program for unbilled receivables.

Q That work paper was prepared for the comfort letter, is that correct?

A No. This work paper was prepared to analyze an account in the records of National Student Marketing.

Q As part of your audit review, is that right?

A That's correct.

Q I would like to ask you a couple of questions first about some contracts that Mr. Velie asked you about that had been written off on National Student Marketing's books.

One of them was a Campana account and Mr. Velie asked you what the gross amount of that account was and I believe you told him the gross amount of that contract was $53,775, is that correct?

A That's correct.

Q He asked you was part of that contract written off. He did not ask you, sir, was part of that contract collected. Was part of that contract billed, since that is the column?

A It was.

Q What was the amount billed?

A 31,875.

Q What was the amount written off?

A 21,900.

Q Similarly with Barnes-Hind, he askedyou about a contract in the gross amount of $26,200?

A That's correct.

Q He did not ask you, sir, whether anyof that amount was billed. Was any of that amount billed by National Student Marketing?

A It was.

Q How much was that?

A 23,800.

Q How much of that contract was written off?

A 2,400.

Q You told us there came a time about a week before the comfort letter had to be presented at the closing of the Interstate and NSM merger when Mr. Natelli told you about the need for the comfort letter.

Do you recall that?

A Yes.

Q In the normal chain of command, was there anybody between you and Mr. Natelli on this audit?

A Yes, Mr. Cologna was.

Q Were you aware, sir, whether or not Mr. Cologna was working on this comfort letter prior to the time that you were first advised of it?

A No, I do not know.

Q Let me show you a copy of Government's Exhibit 25 in evidence, the National Student Marketing Corporation proxy,

and refer you, sir, to what is an exhibit to that proxy listed as schedule C, and ask you were you aware, sir, that pursuant to the agreement between National Student Marketing and Interstate National Student Marketing had to deliver a proxy statement that dealt with a date not more than five business days prior to the effective date, that is, the closing date?

A I was not aware of that at the time.

Q That document, which is in evidence, does reflect, does it not, that the comfort letter had to deal with events no later than five days prior to closing?

A That's correct.

Q I believe you were questioned by Mr. Velie and the Court about your conversation with Mr. Natelli concerning the need for a comfort letter and also questioned as to whether or not you advised Mr. Natelli of what you thought the areas of adjustment might be.

Do you recall that?

A I do.

Q Do you recall, sir, that you testified before the Securities and Exchange Commission in April of 1971?

A I do.

Q Do you recall, sir, being asked these questions and giving these answers, page 190 to 191.

"Q Did you have any discussion about this matter with Mr. Natelli, the matter being the information contained in paragraph 1B2 of the comfort letter?

"A I had some general discussion in relation to items which I felt should be disclosed in the comfort letter with Mr. Natelli but I had no discussion with him after the figures was developed.

"Q Could you relate your conversation that you had wit

Mr. Natelli?

"A He made me aware of the fact that we would issue a comfort letter and ask that I investigate and make a determination of what should be disclosed, if anything, in thi: comfort letter. Subsequent to that point in time while we were still working on the figures, I had a brief discussion with him in relation to the items which I had come across and thought should be disclosed in the comfort letter.

"Q What was the substance of the discussion?

"A As I recall, I discussed it with him and specified that I thought there were problems in relation to old unbilled receivables, the deferred costs of PI programs and charges to additional paid in capital which were not proper.

"Q Do you recall what Mr. Natelli's position was with regard to each of these three items?

"A As I recall, he was in agreement with me that we would have to disclose these items in the comfort letter."

Do you recall being asked those questions and giving those answers in the SEC in April of 1971?

A I'm afraid I don't recall those specific questions and answers at this point.

Q You did, in fact, testify before the SEC in April of 1971?

A I did.

Q Your recollection at that time, sir, was I take it better as to events in 1969 than your recollection is in 1974?

A Yes.

MR. MARTIN: Your Honor, I wouldoffer that portion of the SEC transcript of Mr. Johnston.

MR. VELIE: It's already been read into the record. I don't see it needs to be a further exhibit.

MR. MARTIN: I have no objection if it is considered part of the record. My problem was with the witness' response to the question, to recall that testimony when he said no. That's the only reason I'm offering it.

THE COURT: I know. As I understand his position, he doesn't deny that he gave that evidence.

MR. MARTIN: Fine, your Honor.

THE COURT: So the jury has the matter before it which I would think would be sufficient unto the day.

MR. MARTIN: Could I have Government's Exhibit 26, please, and Government's Exhibit 52?

(Pause.)

MR. MARTIN: Also, Mr. Velie, I'm going to be referring to Government's Exhibit 13. We have 34 in front of the witness.

(Pause.)

Q Let me put these documents in front of you, sir.

Were you aware or do you recall, sir, whether Mr. Natelli was present at the Peat, Marwick offices in Washington on Wednesday, October 29 and Thursday, October 30, 1969?

A I do not recall.

Q Would it refresh your recollection if I told you that there had been some testimony that Mr. Natelli was out sick during that period?

A I do recall that he was out sick during that week.

Q At some point that you were working on the comfort letter?

A That's correct.

Q Now, as far as the drafting of the text of the comfort letter, do you know who was doing that work?

A I was aware that Bill Cologna had been working some on drafting the text.

Q If you would look, sir, at Government Exhibit 26. Do you recall if you have seen that document before?

A That I cannot recall.

Q Both Government Exhibits 26 and 52 refer to receivables written off and refer to an amount of $300,000

Do you see that, sir?

A I do.

Q Was that the correct figure for the gross amount of the profit on these receivables that should have affected the period May 31, 1969?

A Our final determination was that that figure should be 200,000.

Q Would you look, please, at the document before you, which is Page 3276 again, and tell the ladies and gentlemen of the jury how you arrived at the figure of $200,000 as being the correct figure for the receivables written off?

A That figure was developed by reducing the total receivable written off bythe related accrued costs on those ame programs.

Q What was the gross amount of the receivable

written off?

A 372,000.

Q And the accrued cost?

A 166,000.

Q So I take it that you rounded that number off then to $200,000 as the difference between the unbilled receivable and the accrued cost?

A That is correct.

Q Because that is the amount that would reflect on the profit, is that correct?

A That is correct.

Q And both Government Exhibit 52 and Government Exhibit 26 are in error in showing the amount of $300,000, isn't that right?

A That is correct.

Q Included in that $200,000 profit that is to be written off, you said it goes back to May 31, 1969, with commitments from a company known as Syntex, were they not, sir?

A They are.

Q I would like to bring your attention to Page 2666 of Government Exhibit 13 and ask you, sir, does that exhibit reflect the fact that the Syntex commitments reflecting a profit of approximately $60,000 had, in fact, been written

off in the May 31, 1969 figures that appeared in the proxy?

A It does.

Q Does that establish, sir, that the figure of $200,000 which you thought was correct for the writeoff of unbilled receivables applicable to May 31, 1969 in the comfort letter really should have been reduced to 140,000?

A Yes.

Q So indeed the figure of $300,000 in Government Exhibits 26 and 52 should have been $140,000, is that correct?

A That is correct.

Q Sir, you referred to an amount of $500,000 of deferred costs which at the time you did this review you found should have been written off and made applicable to the period May 31, 1969.

Can you tell the ladies and gentlemen of the jury what facts youfound that led you to that conclusion?

A One of the items were some printing charges from I.S.Berlin which had not been recorded in the client's records on a timely basis and, therefore, had not beem amortized over the period of time when revenues were derived which related to these costs.

The other portion of this adjustment to the deferred costs was due to National Student Marketing not having written off the deferred cost in a systematic way

and had to increase their writeoffs subsequent to May 1969 which we felt should be thrown back and shown as of May 1969.

Q When did these matters come to your attention as best you can recall?

A They came to my attention in connection with my work on the August 31, 1969 audit.

Q Was that in October or what was the month as best you can recall?

A It was in October of '69.

Q The time you found these adjustments you later determined to be necessary to May 31, 1969, was there any indication in anything that you found that anyone at Peat, Marwick & Mitchell was aware of these adjustments and the need for these corrections prior to the time you found them?

A No.

MR. MARTIN: Would this be a convenient time, Judge? I probably would only have about ten minutes. If I can organize my thoughts, I will probably live up to that estimate.

THE COURT: All right. Ladies and gentlemen of the jury, we will suspend now for luncheon and we will resume at the usual 2:15.

(Luncheon recess.)

(In open court; jury absent.)

THE COURT: Gentlemen, can't this wait? We spend our time withthe jury sitting, and I don't think that is very nice.

MR. MARTIN: Your Honor, I just heard from Mr. Velie that his next witness after Mr. Johnston, who will only take another 20 minutes, is Mr.Wharton. That is the only reason I raise it.

THE COURT: We will face Mr. Wharton if, as and when he appears.

MR. VELIE: He is here in the building. He has come from out of town, your Honor.

THE COURT: I said we will face that problem when it arises and not before. These anticipatory problems are not necessary.

Let's bring the jury in.

(Pause.)

THE COURT: Gentlemen, Mrs. Rosenwald is not back apparently from lunch. While we are waiting for her perhaps we can save some time in anticipation after all.

Come up to the side bar.

(At the side bar.)

THE COURT: Mr. Velie, as you may recall, this

morning Mr. Martin loaned me a Xerox copy of a memorandum apparently dated April 16, 1970 by Mr. J.W.W., whom I assume is Mr.Wharton.

MR. VELIE: Yes,sir.

THE COURT: In substance, is that whatyou are going to try to elicit from him?

MR. VELIE: I don't need the exhibit itself so much as he has refreshed his recollection from it.

THE COURT: Lkt me make this simpler. He sets forth a narrative there. Is that what you, in general --

MR. VELIE: No, this is much broader than what I need. I am only going to elicit from him the testimony about the February 18th meeting, February 18, 1970, which is four months after theproxy was filed, which he attended.

THE COURT: What we will do is interrupt and have a voir dire.

Perhaps I better make it clear to you gentlemen once, again because I am not convinced that even the defense lawyers understand what concerns me about the O'Connor testimony or this general type testimony.

The rule of law which the Government seems to be alluding to here I have no quarrel with. In other words, I disagree flatly with Messrs. Martin and Stillman in their apparent argument that anything that happened after some time

in October is just not in the case. In my mind that is just not so, under the law or anything else.

However, what does concern me is that the testimony as to the reason why these accounts were written off is very important. In O'Connor's case he really didn't know. He told me in response to my question that he never did an analysis of the EAL or Eastern contract. Therefore, we would be left in limbo with an implication with no nexus to Natelli or anybody else at all.

I am concerned with the possibility that this may turn out with Mr. Wharton's evidence.

MR. VELIE: I believe that it won't, for this reason.

THE COURT: You don't have to argue that now. I am just trying to explain to you. I never have, I believe, misunderstood the theory of law that is going on here, and it is a theory that is perfectly acceptable in routine conspiracy cases or schemes like this alleged in Count 2, but that is not the answer.

MR. VELIE: Perhaps I misunderstood your Honor's ruling last night. I rethought the matter and in our offer of proof I hope that we express ourselves clearly on this. In the offer of proof I point out that Mr. Wharton does know why there were writeoffs.

THE COURT: Yes, but that is only part of the problem. As I see it, we are going to have to have a voir dire.

What you are really doing here, as I understand it is seeking to indicate that what finally happened is some proof that Natelli clearly knew or should have known that the Eastern account was a phony the moment Cort Randall raised it at Pandick Press.

I will assume arguendo that some events or happenings post the end of the scheme here would be relevant to show an individual's state of mine or knowledge or however you want to put it.

But I want to hear what really went on at this meeting, because if they decided to write it off for reasons which really have nothing to do with the Government's main proof as to the weakness of these unbilled receivables in '68 and '69, why, I don't think it is fair to charge that as evidence against Natelli.

MR. VELIE: Allow me to argue exactly to that point, your Honor.

THE COURT: No, no. I don't want you to argue because you are not out of court yet. We are going to have a voir dire of Mr. Wharton. Then you can argue.

MR. VELIE: Perhaps it would be some assistance

in assessing the testimony if I allow as to my theory as to why what is coming will be admissible; perhaps not.

THE COURT: We are held up by the absence, unexplained, of our Juror No. 5.

MS. SANTANGELO: She is out making a telephone call, your Honor.

THE COURT: Is she back yet?

MS. SANTANGELO: She passed me in the hall and asked if court had started.

MR. VELIE: If I have a moment, I would like to take a stab at it.

THE COURT: All right, you stab at it.

MR. VELIE: Thank you.

The false statement with respect to the Eastern commitment is this:

Mr. Nateli blandly states in the proxy statement that there are earnings of a certain amount, without disclosing the terrible risk involved in the fact that the company has not yet earned anything. The risk can be eventuated by almost anything. If the company fails to do its work it will not earn its money, and yet the earnings statement says it has earned money.

Exactly what the risk was eventuated. The company failed, through its inability to do the work, to do the work, and since the people had never been told there was any risk at all, the statement was a false one and a material one.

THE COURT: I understood that long ago. Again, there is still to be considered, it seems to me, what actually were the reasons why the Eastern account four months later was written off.

MR. STILLMAN: Eight months later, your Honor.

THE COURT: I am going from late October. You are

right.

In the sense you mean you are absolutely right. I stand corrected. But the actual time is not too important.

What I am concerned about is there is some evidence that they decided to write this contract off for quite different reasons than I think myself the Government has proved possible that Natelli should have thought about August 14 and 15 and later on, when they were -- no, on August 14 and 15.

MR. VELIE: My point is that Mr. Natelli knew it hadn't been earned.

THE COURT: I understand your broad point. That is why I say I have no quarrel about the theory. What I am concerned about is the facts that flesh out the theory.

MR. VELIE: Very well. We will await the voir dire.

MR. MARTIN: And I never argue with a Judge when I agree with the ultimate ruling. So I have nothing to say at this time, Judge.

THE COURT: We will see what happens.

(In open court, jury present.)

THE COURT: All right, gentlemen. We have lost enough time already. Let's proceed.

Where is our witness? Do you know where the

witness is, Mr. Velie?

MR. VELIE: He is in the witness room.

THE COURT: All right.

xx J O H N T. J O H N S T O N, resumed.

xx CROSS EXAMINATION (Continued)

BY MR. MARTIN:

Q Mr. Johnston, at the time the comfort letter was prepared, you were aware, were you not, of all of the write offs of the August 31, 1968 unbilled receivables that you testified about here today, were you not, sir?

A I was.

Q At that time you were a CPA, were you not?

A I was.

Q Did you suggest to anyone at that time, sir, that that comfort letter should contain a portion disclosing the fact that there had been write offs of these August 31, 1968 receivables?

A I did not.

Q And you worked on the audit of August 31, 1969, until its completion, did you not, sir?

A I did.

Q Until those financial statements were prepared and published and Peat, Marwick had signed its report?

A I was.

Q I show you a copy of that report, which I believe is 46, a copy of Government's Exhibit 46 for identification, and ask you --

MR. VELIE: 46C, Mr. Martin.

Q -- 46C, and ask you if that refreshes your recollection as to whether or not the final report reflected income on the basis of unbilled receivables?

A The final report did reflect income on the basis of unbilled receivables.

Q What amount was that, sir?

A Income or the amount --

Q Of the unbilled receivables.

A The reflected 2.8 million in unbilled receivables.

Q A portion of that, approximately $900,000, was unbilled receivables from W. R. Simmons and Associates, is not that correct, sir? If you look at the footnote I just referred your attention to.

A That's correct.

Q So that the parent companies unbilled receivables totaled what, sir? Again I think if you look at that same footnote --

A Approximately 1.8 million.

Q At the time that was prepared did you suggest to anyone that it was improper for National Student Marketing

to record income on the basis of the percentage of completion method of accounting on those contracts?

A I beg your pardon. I missed the first part of your question.

Q Did you suggest to anyone at the time that report was prepared that it was improper for National Student Marketing Corporation to use the percentage of completion method of accounting to record income on contracts in progress?

A I did not.

Q Does that financial statement which you worked on, sir, contain any disclosure of the fact that the August 31, 1968 unbilled receivables that you previously testified about had been written off?

A The unbilled receivables reflected in the comparative 1968 figures have been adjusted for --

Q Is there a statement in that report in the balance sheet, does that restate August 31, 1968?

A It does.

Q What is the figure for unbilled receivables at August 31, 1968 reflected in that document?

A What does it reflect?

Q What is the figure, yes.

A $945,000.

Q The amount originally reported was a million seven hundred thousand, isn't that correct, the original August 31, 1968 report?

A That sounds approximately correct.

Q And the difference is the result of the retroactive write offs that you have identified previously, is that correct?

A That's correct.

Q Other than that, is there any footnote in that financial statement which you worked on indicating that there had been the write off of unbilled receivables about which you testified here today?

A No, there is no other disclosure.

Q If you felt that such a footnote was necessary, would it have been your place to make that fact known to Mr. Cologna and Mr. Natelli?

A It would have been.

Q Did you do that, sir?

A I did not.

Q You told us about a conversation with Mr. Natelli just prior to the timeyou prepared your audit program.

Do you recall testifying about that?

A Yes.

Q Would you go into the substance of that conversa-

tion again, did Mr. Natelli tell you at that time or at any other time not to discuss the fact that there had been write offs of August 31, 1968 unbilled receivables with anyone?

A He did not.

Q Did he ever ask you, sir, to cover up anything?

A He did not.

Q Did he ever ask you to do anything but an honest job as a CPA working on this audit?

A No.

MR. MARTIN: I have no further questions.

THE COURT: Mr. Stillman.

MR. STILLMAN: Just a few, your Honor.

CROSS EXAMINATION

BY MR. STILLMAN:

Q Mr. Johnston, there were some questions asked by Mr. Martin concerning the program that you prepared for the audit procedures you were going to follow on the contracts in progress for the August 31, 1969 audit.

Do you recall that?

A I do.

Q Do you also recall that you were called upon to identify certain handwriting in the program itself and you told us that as to certain of the entries, they had been

prepared by yourself and with respect to a couple of entries, a couple of the steps that you were to perform, they were in Mr. Natelli's hand.

Do you recall that, sir?

A I do.

Q I would like to ask you whether you recall in developing the program speaking to Joe Scansaroli concerning the work that you had outlined be done with respect to those contracts in progress?

A I recall that he reviewed the program which I had put together.

Q What is your best recollection with respect to whether or not Mr. Scansaroli made any written suggestions as to steps you should follow in connection with the work you were doing?

A As he suggested, Step 7 here.

MR. STILLMAN: I'm looking, Mr. Velie, at page 2763 of Government's Exhibit 35.

It is this pink sheet and the handwriting 1 through 6 is yours.

Items number 7 you identify as being in the hand of Joseph Scansaroli, is that right?

A That's correct.

Q Actually Exhibit number 35, page 2763, is, I guess,

the original of what appears in Natelli Exhibit N, which was a copy of it, is that right?

A That's correct.

Q And with respect to 2763 contained in Government's Exhibit 35, what you did here was, as you accountants call it, you kind of sign off or put your initials after you did each and every one of the steps which you had outlined, Mr. Natelli had supplemented and Mr. Scansaroli had supplemented, is that correct?

A That's correct.

Q During the time, Mr. Johnston, that you were doing the work that you performed on the August 1969 audit, you have told us that there came a point in October when Joe Scansaroli left Peat, Marwick and went to work for National Student Marketing Corporation, is that correct?

A That's correct.

Q Where did you do some of the work that you were actually doing on this audit?

A I performed most of the audit work inNational Student Marketing's offices.

Q Was Mr. Scansaroli in or about the place that you were doing your work?

A He was. I worked in his office most of the time.

Q You had a desk actually in the same room that he

was working in, is that it?

A That's correct.

Q Now, Mr. Johnston, one of the things that you were doing I gather was looking at these contracts in progress for the period 8-31-68 through 8-31-69, is that right?

A That's correct.

Q Of course you also pointed out to us that some of the work that you did during the course of this time was the work thatyou did on the comfort letter, is that correct?

A That's correct.

Q Do you recall in the course of doing this work, Mr. Johnston, whether or not you had occasion to talk to Joe Scansaroli about what you were finding and what you saw in the books and records of the company?

A I cannot recall specific conversations, but during this period of time I was in daily contact with Mr. Scansaroli and we discussed findings or possible adjustments that we had developed.

Q What did Joe Scansaroli say to any of the findings or the things that you were working on in the course of your audit work?

A He was interested in what the adjustments were, how we had developed them, what sort of documentation we had to support our position.

Q Did he say anything to you, sir, which indicated that he was concerned or apprehensive about the nature of the work you were performing?

A No.

Q Did he indicate to you anything to the effect that you should not perform any of the steps that you were performing?

A Not at all.

Q Did he say anything to you, sir, with respect to the work that you were doing in looking at these contracts in progress and the other assets and liabilities of National Student Marketing which you considered in the slightest bit improper?

A No.

Q Thank you very much, Mr. Johnston.

MR. STILLMAN: I have nothing further.

THE COURT: Mr. Velie.

MR. VELIE: I have no questions.

THE COURT: All right. Thank you, Mr. Johnston, you may be excused, sir.

(Witness excused.)

MR. VELIE: Your Honor, this brings us up to the matter that you wished us to take up separately.

THE COURT: Mr. Light and ladies and gentlemen, since we have a technical problem at this point, I am going to ask you to take the afternoon recess early. That would give us a chance to get into this matter and then be in a position to move forward I trust without any delay when you come back.

Take your recess at this point.

(Jury absent.)

MR. VELIE: Mr. Wharton.

J O H N W H A R T O N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VELIE:

Q Good afternoon, Mr. Wharton. Was there a time when you were employed at Peat, Marwick & Company?

A Yes.

Q In Washington, D.C.?

A That's right.

Q When was that, sir?

A In January of '67 until March 26 of '73.

Q All right. Do you recall working on the calendar

year end audit in 1969 for NationalStudent Marketing on behalf of Peat, Marwick, Mitchell & Company?

A Yes.

THE COURT: What year end was that?

MR. VELIE: The year that ended 12/31/69.

THE COURT: I thought we were on a fiscal year basis in this company and for the first time we now have a year ending at the end of the calendar year.

Q Mr. Wharton, would you explain why there was that change?

A Just previous to December of '69 there had been a merger with a large insurance company in Chicago, Interstate ~~Financial~~ National Corporation, which is by law required to be on a calendar year.

As a result the entire corporation was changing its fiscal year to a calendar year.

Q In that connection you were performing audit work for the year ending 12/31/69, is that correct?

A That's correct.

Q Calling your attention to at or about February 18, 1970, did you have occasion at thattime to speak to anybody about unbilled accounts receivables?

A Yes.

Q All right. Did you have a meeting?

A Yes.

Q With whom?

A There was Bob O'Connor of my staff, Doug Garriock of National Student Marketing, Bernie Kurek of National Student Marketing and other individuals may have sat in on this meeting at various times, including Johnnie Johnston of Peat, Marwick.

Q Mr. Wharton, can youtell us, please, as best you recall the conversation there, identifying the persons who spoke? In other words, what each person said.

A Mr.Garriock was in charge of the campus representative division of National Student Marketing. He was headquartered in New York and had come to Washington at our request to review various commitments and contracts relating to their business.

Bernie Kurek had in his possession a listing of various of these contracts and Mr.Garriock indicated that due to difficulties that they had had in the campus representative section of the company, that they were going to have to reconstitute this section and, in fact, it was practically decimated and for all practical purposes were going out of business as far as the campus rep section was concerned.

In this regard there were a number of contracts

and commitments which they would be unable to perform.

As a result, it would be necessary to write these off the books.

Q When you say contracts they were unable to perform, was it your understanding that National Student Marketing would not be able to perform the service it had promised to perform for the clients?

A That is correct.

Q All right. Did Mr. Kurek do something during this meeting?

A Yes. He noted in the margin of the listing of contracts which ones would have to be deleted.

Q Was there more than one contract that would have to be deleted?

A Yes, there was.

Q Do you recall offhand some of the client names or would you like to refresh your recollection?

A Not offhand.

Q Very well. I am going to show you what has been marked Government Exhibit 42 for identification. I am going to turn to Page 0843 and the following pages and ask you to leaf through there and tell us, first of all, if you can identify the little booklet that has been stapled into the work paper?

A Yes,this is a Peat, Marwick audit binder on fixei fee contracts, unbilled receivables and accrued cost of sales.

Q The whole exhibit?

A Yes.

Q Is the binder?

A Yes.

Q Al l right. The pamphlet I have shown you, what is that?

A These are the items that were deemed necessary to write off our listing of portions of them.

Q Is that your copy of Mr. Kurek's list? Is that the idea?

A Yes, it is.

Q As far as you can tell, some of the markings in the margin, are those markings you saw Mr. Kurek making?

A Yes, they are

Q All right. Would you read out loud for the Court what it is that you are looking at right now. Identify the page.

A Yes. It is Page 11. Calendar outline of Eastern Airlines 1970 program; program marked posters, promotio of mid-term Easter vacation travel. 15,000 posters. Total commitment is $17,500 delete.

Q What is the delete?

A The delete is Mr. Kurek's notation that this program would no longer be fulfilled.

Q Is it fair to say that that page and other pages in that booklet each contain little program descriptions of portions of the Eastern Airlines contract?

A Yes, it is.

Q And that Mr. Kurek made a mark in the margin next to several of them?

A Yes.

Q Indicating as to many of them the word delete, is that correct?

A Yes, that is correct.

Q As to some he wrote okay?

A Yes, he did.

Q All right.

MR. STILLMAN: What is the page you are looking at.

MR. VELIE: 0855.

Q Similar markings appear on other pages, is that correct?

A Yes.

THE COURT: What exhibit are we dealing with here?

MR. VELIE: That is 42, your Honor. That is Exhibit

42 for identification, your Honor.

Q Now, sir, after receiving this piece of paper and other pieces of information at that meeting, did you cause your staff to make accounting entries in the Peat, Marwick work papers?

A Yes, we did.

Q Is it fair to say that accounting entry 24 is some of the delete entries?

A Yes, it is.

Q Deletes the Eastern contracts in part and some other contracts as well?

A Yes, that is correct.

Q All right.

I show you Government Exhibit 41 for identification at Page 0318.

First of all, this is, is it not, the trial balance binder for that period's audit, is that correct?

A Yes, it appears to be.

Q At Page 0318 there is a description of Entry 24, is that correct?

A That is correct.

Q To speed things up, I am going to read that. It is an entry adjusting downward contracts in the amount of $852,000-some and associated costs, if I have that right.

gab-8 Wharton-direct

And the explanation is unbilled receivables to write off accrued costs and unbilled receivable contracts that were booked at 8/31/69, and subsequently written off on 8/31 to 12/31 period.

Do I have that right?

A That is right.

THE COURT: The total amount written off is?

THE WITNESS: The total amount is $852,496.

Q That includes not only the Eastern contract but several other contracts as well?

A Many contracts.

Q Many contracts?

A Yes.

THE COURT: Can you give me, Mr. Wharton, the amount, the total amount of those portions of the Eastern contract which were written off?

THE WITNESS: Not without adding them up, sir.

Q Do you need scrap paper and pencil?

THE COURT: I think we better rely on you rather than ourselves.

MR. VELIE: Perhaps it will save a little bit of time, your Honor.

Mr. Dingwall here has --

THE COURT: I will take Mr. Dingwall's figures

for the moment subject to any checking Mr. Wharton wants to do.

MR. VELIE: Why don't you see if you can check us, Mr. Wharton, while we are doing this. Mr. Dingwall adds up the Eastern amounts of that figure coming out to $591,840, and for the Court's edification and something I need as well, you will recall that the contract was $519,000. It got adjusted upward after it was initially written on so that more of it was written off than was initially written on.

End 2B

THE COURT: But the total Mr. Dingwall gets of those portions written off is --

MR. VELIE: $591,840. Another 200-some odd are other contracts being written off at the same time.

THE COURT: Does that seem roughly right to you, Mr.Wharton?

THE WITNESS: Yes, just looking at the numbers here.

THE COURT: Is that it, Mr.Velie?

MR. VELIE: Unless the Court needs further information on which to evaluate this voir dire, that is all I believe we need to bring out on the stand.

THE COURT: Mr. Wharton, may I ask this: As I understand what you have said, at this meeting you had this fellow Garriock come down from New York City to the District of Columbia and meet with you, Kurek and theothers and it was Garriock who said that because of problems in the campus division that he felt that they would have to phase out a business to a large extent?

THE WITNESS: To a large extent, yes, that the campus rep organization as it was then constituted was inefficient and that they weren't getting the results that they thought they were.

THE COURT: And then, as you have explained, he

was asked and he then set forth those contracts and the specific portions thereof that he thought that his division could not complete and thus should be written off?

THE WITNESS: That is correct.

THE COURT: And Kurek as the vice-president of finance, etc., sat there with this check list which you referred to a moment ago to refresh yourself --

THE WITNESS: Yes.

THE COURT: -- and he either agreed or didn't agree?

THE WITNESS: Yes.

THE COURT: That is how it was done?

THE WITNESS: That is correct.

THE COURT: Any questions, Messrs. Martin and Stillman?

MR. MARTIN: Judge, just one, which I really think was covered by your Honor, but so the record is clear.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Did anyone at that meeting suggest that Eastern Airlines had denied that it had made a commitment to National Student Marketing?

A No.

THE COURT: At that time, Mr. Wharton, what was

your rank in the PMM hierarchy?

THE WITNESS: I was a senior accountant.

THE COURT: A senior accountant in the Washington office?

THE WITNESS: That is correct.

THE COURT: Was Mr. Anthony Natelli stillthere at that time?

THE WITNESS: Yes, he was.

THE COURT: He was still the managing partner?

THE WITNESS: Yes, he was.

THE COURT: In February of 1970?

THE WITNESS: That is right.

MR. MARTIN: I think I have to clarify that, your Honor.

BY MR. MARTIN:

Q Was Mr. Natelli wor king on this audit of NationalStudent Marketing, was he in charge of this audit?

A No, he was not.

THE COURT: The 1969 calendar year audit?

THE WITNESS: That is correct. The audit had been t aken over by the New York office at that time and we were simply finishing up.

THE COURT: Right.

MR. STILLMAN: Just one or two questions, your Hono

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. STILLMAN:

Q Was Joseph Scansaroli a participant in this meeting on February 18,1970?

A Not to my remembrance.

Q Indeed, in your memorandum you make no mention of his name, do you, sir? Here is your memorandum which appears in Government Exhibit 42, which actually is dated in April of 1970, reflecting a conversation on the telephone in February of 1970, isn't that right?

A This was a different meeting.

Q A different meeting?

A Yes.

Q YOu had two meetings on February 18, 1970?

A I think this was immediately prior -- no. It could be my dates are a bit --

Q Regardless of the dates, sir, I don't mean to attempt to confuse you about this --

A Here it is. April, yes.

Q It was in April of '70?

A That's right. There were two meetings. This first meeting was between Bob O'Connor only with Bernie Kurek and others and after this we decided we had to get

Garriock to Washington. He came down and it was in April that the meeting of which I spoke took place.

THE COURT: So in other words, everything happened as you have told us, but you were just wrong on the date?

THE WITNESS: That is correct, yes.

MR. VELIE: Your Honor, I believe that the witness may be confused and there is one question which can straighten it out very quickly.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Please take a look at this booklet that you have stapled or somebody has stapled into your work papers. If the meeting with Mr. Kurek occurred in April would you please explain how it got stapled in here on February 19?

A Okay. This often happens with work papers. They are put in at a certain date. Normally the dates on this are the time that they are put into the work papers. Very often audit work is performed after the date they are put into the work papers. In this particular case, in this particular audit, due to the circumstances, many times we -- in many cases we reconfirm these contracts one month, reconfirm them the next month, reconfirm them the next month, during this period, because contracts -- we had found that contracts that had been confirmed in one month,

the next month the client was disowning them.

Q Fine. All I am asking you is this piece of paper with Mr. Kurek's markings in it, which says "delete," is stapled into your work papers apparently on February 19, 1970.

A That is correct.

MR. STILLMAN: I object to that.

Q Does that refresh your recollection as to whether Mr. Kurek delivered that thing to you at or about February 18 or 19?

A I would presume looking at this that it was probably delivered to us around February. But the meeting to which I refer did not take place until April and it is very possible that this listing was redone and simply put back into the binder.

Q My next question.

MR. VELIE: Excuse me, Mr.Stillman. I have overstepped my turn, but I think this may assist the Court.

Q Would you tell me then how adjusting entry 24 got done on February 18,1970?

MR. STILLMAN: Assuming that is when it got done.

Q Is it dated February 18, 1970?

A There were a number of writeoffs. I do not believe this is the last one.

Q Let's see if we can straighten that out. So some of the writeoffs got done in February, is that the idea, and others later?

A Yes.

Q Would you please take a look and tell us if you can at or about when the writeoff in number 24 got done?

A I would say these that are listed in 24 were written off February 18, subsequent to Mr. O'Connor's meeting with ~~Bernie~~ Bernie Kurek, as I see now from this memo. As I say, it has been a number of years, it is the first time I have seen it in a number of years.

MR. STILLMAN: Are you finished now, Mr.Velie?

MR. VELIE: Almost.

Q The memorandum that you have been referring to --

MR. STILLMAN: This is unfair. It was my examination. If he would like to start again I will sit down and you start and then I will go.

THE COURT: Gentlemen, please. There is no jury present. All these fireworks are falling on very, very disinterested ears, to wit, my own.

One way or another we are going to get to the bottom of this. Very simply, Mr. Wharton, if you can tell us, was the Eastern contract or the portions thereof written off after a meeting at which Mr. Garriock was

present or not?

THE WITNESS: Yes, they were.

THE COURT: Having reviewed these documents that Messrs. Stillman and Velie have brought to your attention once again, is it your testimony that this meeting with Garriock resulting in the Eastern writeoff occurred in April rather than on February 18, 1970?

THE WITNESS: Reviewing this material, it appears to me at this time, Judge, that the majority of the entry was made in February, following Mr. O'Connor's telephone call interview with Kurek.

End 8A

THE COURT: Then I am puzzled. Then it really had nothing to do with meeting with Garriock after all?

THE WITNESS: Well, this was a final review or a subsequent review, your Honor.

THE COURT: Now I am really confused. You told us, as I understood you, that Garriock was asked to come down, he said to you and Kurek and everybody else at a meeting that the campus division was in deep trouble, they had to phase out.

THE WITNESS: Yes, sir.

THE COURT: But now I understand you to say that it didn't happen that way necessarily at all.

THE WITNESS: It did happen, sir, but the April meeting, again, refresh my memory -- we had a number of write offs during this period, your Honor.

At this point I would say that the entry referred to, number 24, in the amount of 852,000, was made in February by Bob O'Connor. Subsequent to that date and on our request to have Garriock meet with us additional amounts were written off.

THE COURT: Then I am confused even further, because as I understood your original testimony, you stated -- and I am reading from my notes here, which I would be the first to admit may be wrong -- you stated that finally after meeting

with Garriock and Kurek and O'Connor and whoever else a total of contracts which appeared on the books, as of August 31, 1969, were written off in the amount of $852,496, of which amount the Eastern contract portions totaled $591,840.

Now, my question to you is was that done finally after Garriock came down and said what he said or was it done before you had him down, which I gather now you think was in April.

THE WITNESS: I think I was confused on my dates, your Honor. The meeting that we had with Garriock was definitely in April. Prior to that time we had been trying to ascertain which of these contracts were still good, which were bad. This had to be done by telephone mostly since the principals concerned were in New York.

Reading this memo, as I say, it was made in April 16, and I was trying at that time to put down everything that had taken place up to that time.

THE COURT: All right, anybody else want any more questions?

MR. VELIE: Your Honor, I still think there are one or two things unsettled.

BY MR. VELIE:

Q Before the February write off was made or at or about the time of the February write off accountants from

Peat, Marwick and Mitchell had in their possession a copy of Mr. Kurek's remarks which said "Delete", and you know that is so, do you not, from the work paper which staples it in on February 19?

A Yes.

Q In fact, somebody has written on that very Kurek document the number 24, referring to write off number 24.

A That's correct.

Q And that write off you have told us was made on February 18?

A I would say so, judging from the date of the AJE, yes.

Q So that whether or not you saw Garriock first, Mr. Kurek had passed on the information to delete all this stuff in February?

A That's correct.

Q Do you have any kind of a recollection at all if an explanation was given at that time?

A During all of this period we had been told that the campus marketing section was falling apart. Now, Garriock's final confirmation was during the meeting in April, but it was to the effect that National Student Marketing could no longer perform this work.

Q So it is the same explanation, but you personally

received it a little bit later, is that the idea?

A That's correct.

Q You received it in your official capacity though in February when you were supervising this work, is that correct?

A Yes, that's correct.

MR. VELIE: Thank you.

THE COURT: Mr. Stillman or Mr. Martin or both.

MR. STILLMAN: I don't think I finished, your Honor, what I wanted to do before, and that is to ask this witness whether or not Joe Scansaroli had anything to do with the work that you have now told this court about.

THE WITNESS: No, I do not believe he was in on this meeting at all.

MR. STILLMAN: Did you have any conversation with him concerning the testimony that you have now given?

THE WITNESS: No, I can't recall any at all.

MR. STILLMAN: Thank you.

THE COURT: Mr. Martin.

xx RECROSS EXAMINATION

BY MR. MARTIN:

Q Just so I am clear, I take it your notes do not reflect that at either this February 18 conference call or at the April meeting anyone suggested that Eastern Airlines

had said that they were not willing to live up to their commitment.

A No.

THE COURT: Thank you, Mr. Wharton. Would you be willing to step into the witness room and wait just briefly before we decide what we are going to do here?

THE WITNESS: Sure.

THE COURT: Thank you very much.

(Witness left the courtroom.)

THE COURT: Once again I am convinced of the desirability of voir dires.

Mr. Velie, it doesn't come out anywhere near what you said it was going to come out. I am not saying this to blame you, but I am just making the observation.

MR. VELIE: Your Honor, I believe that it comes out in every important matter what we intended.

THE COURT: Let me suggest to you that not only is there confusion in the witness' mind, but really Kurek was apparently, from what he now says, the person who made the decision, and I am still at a loss as to what the reason was to do the writing off.

MR. VELIE: I believe this witness has revealed what the reason is and I can --

THE COURT: Now, don't you testify for him, please.

That is embarrassing.

MR. VELIE: I believe he has just told us he knows what the reason is. He is simply unable to tell us to a certainty whether the Garriock meeting is April or February, but he knew the reason throughout the period caused write offs to be made in February.

THE COURT: And you say that is what? You say that is because Garriock pointed out that his division was crumbling and going out of business?

MR. VELIE: That's right, causing the Eastern commitment to fail as well as many others.

THE COURT: All right. Now let me point out something else.

Now that I have heard this witness, and putting aside his confusion, which I consider to be considerable, by the way, I am now marvelling that the defense is objecting to this.

I would think that you would not want to be offering it and the defense would be only happy to hear it.

MR. VELIE: I would like the whole matter to come out before the jury.

THE COURT: That is what my puzzlement is. This doesn't harm anybody. First of all, as I see it, you weren't offering this against Mr. Scansaroli, who is long gone into

into his job for NSMC, right?

MR. VELIE: I am not certain I know what your Honor is saying, I understand what your Honor is saying.

THE COURT: Are you offering this as against Scansaroli?

MR. VELIE: I am offering it to establish that some four months after theproxy was filed the Eastern contract got written off for the reason that was stated.

THE COURT: I understand that.

MR. VELIE: I don't claim that Mr. Scansaroli was there or wrote it off, that's true.

THE COURT: But you still want it in the case as against both him and Mr. Natelli?

MR. VELIE: I believe that it proves circumstantially that it had the same infirmity four months before.

THE COURT: Now we at least know.

MR. VELIE: Right.

THE COURT: Would you mind telling me what this really does to advance your theory. It seems to suggest that for reasons which came up as a result of the problems of the campus division, which nobody has testified were apparent in October or August of 1969, that somehow Natelli and Scansaroli and everybody else should have foreseen all this.

MR. VELIE: Exactly, your Honor.

THE COURT: That's a pretty big jump.

MR. VELIE: The point I'm trying to make is this. Number one, it was foreseeable to the extent that the campus marketing system was responsible for these unbilled accounts receivables which by August, 3.3 million of them had been booke and 2 million had been written off.

It was an utter failure in August.

THE COURT: That you can already argue. I understand that.

MR. VELIE: That's what I'm trying to say.

THE COURT: I'm not concerned -- there's ample evidence in the record already in my judgment, which allow you to make this argument.

MR. VELIE: I understand that. Mr. Natelli knew this, Mr. Scansaroli knew this, and yet without disclosing any risk in the Eastern commitment said that it was earnings of the company.

So that it is hardly a surprise when the company fails once again four months later to be able to do the job.

THE COURT: I think this amounts to sheer speculation and to do this on the basis of a witness whose recollection is very shakey and to do this on the basis when he apparently made no such determination at all, he was just

there, and we don't know whether Kurek decided this or who decided it, we really don't know anything for certain. Let me find out. If I were defense counsel, I might look to have a Government witness get on and say all these things, to show, A, total confusion and, B, information which arguably doesn't meet the point the Government is trying to make. What is your position?

MR. MARTIN: My position is simply this, your Honor.

It may be at some point in this trial I will call John Wharton. He said he was surprised --

THE COURT: I don't want to get into that.

MR. MARTIN: I realize that.

THE COURT: What is your position?

MR. MARTIN: On this proffer it is not relevant to the issue and I continue to press my objection.

THE COURT: All right. Same with you, Mr. Stillman?

MR. STILLMAN: Precisely, your Honor.

THE COURT: All right. I'm sorry, Mr. Velie. I might point out there's another problem here. His testimony doesn't seem to be consistent with that of Mr. O'Connor. It may be that one of them is trying to cover up something here. It may be that there's a total failure of memory on the part

of both of them, it may be there's a failure of memory on the part of one of them. This doesn't jibe at all.

MR. VELIE: I don't follow that, your Honor.

THE COURT: O'Connor said that he made the entries which we can now call entry number 24.

MR. VELIE: Right.

THE COURT: And he wasn't too sure, but he thought it was done because Wharton told him to do it.

Now, according to Wharton he doesn't really know when it happened, he doesn't offer that he told O'Connor to do it, he thinks it was because of Garriock, but he admits it was done probably on February 18 even though Garriock didn't come down until April sometime.

MR. VELIE: I don't believe there's any inconsistency at all. If you will take a look at the document you will see that O'Connor physically did make the entry.

THE COURT: I don't question that.

MR. VELIE: Wharton was his superior.

THE COURT: Right.

MR. VELIE: O'Connor, the underling may or may not recall the things that happened at meetings. Wharton knows the reason and can't place the date of the meeting and that's the only confusion in the matter.

THE COURT: You think Wharton knows the reason.

He certainly didn't persuade me he was sure of that at all.

MR. VELIE: I believe he does. He just can't place when he got it accurately. If I can have another question and answer, I believe we can establish that.

THE COURT: Look, we had plenty of time. You went back and forth. At least you got to admit even you were surprised. You told us this all happened on February 18. I'm not blaming you. It certainly didn't come out that way.

MR. VELIE: He got a little confused on Mr. Stillman's excellent cross examination.

THE COURT: For Heaven's sake --

MR. VELIE: The paper shows it happens on February 18.

THE COURT: That isn't what the witness was willing to say. It may be he's just trying to cover up. I have to listen to what I hear.

MR. VELIE: Your Honor, I'm really frankly surprised. I thought I heard him clearly say that looking at the entry, that it was made on February 18, looking at the paper given by Kurek, that it was stapled in on February 19; that, therefore, the major part of the entry, certain entry 24, was made in February.

THE COURT: He finally said that very reluctantly. To me his demeanor and his words indicated extreme confusion

to put it politely.

MR. VELIE: That certain goes to the weight of his evidence, if anybody wants to dispute the truth of this matter. It doesn't go to its admissibility.

THE COURT: Mr. Velie, again my trouble is that you want to put on a witness who is not too sure of his recollection, and even if he were sure of his recollection, I don't see that factually there's any compelling reason for a fact-finder to make the final jump you want him to make. I still don't know from anybody who apparently should know exactly why the Eastern contracts in significant portions were written off.

I quite agree with you that Wharton seems to feel it is because of Garriock. But that's undercut by his confusion as to the dates.

MR. VELIE: I don't believe that the person who caused the information to be brought to Peat, Marwick and Mitchell's attention is the terribly important point that the Government and the defense is fighting about. I don't feel that they are contesting any of the important points, which is that the campus marketing system was failing and that National Student Marketing couldn't do the work and that Peat, Marwick was told this in February and made these entries.

THE COURT: Again, accepting that as true, I don't see what that has to do with the events on August with any clarity. Possibly you are right, I understand that. But it may well have been because of supervening developments which occurred after the proxy statement. I can't tell at all from these witnesses.

MR. VELIE: Well, your Honor, if that's so, to the extent that it is so, that is a point which the defense can make.

I believe we cite in our memorandum --

THE COURT: No, no. Wait a minute. Mr. Velie, it is not the job of the Judge to allow testimony which borders on being incompetent, and if it is not incompetent, it is certainly obscure even if it is true testimony, and then to argue to a jury, you see, they terminated this and that shows that Natelli and Scansaroli knew this was bad business in August -- look, I'm an ex-prosecutor, I'm capable of being as suspicious as you are. I don't make that jump particularly sitting here as a judge in this court.

Nobody has really been able to come in and give any solid evidence. I admit there are certain signs that some of these Government witnesses who are PMM people or former PMM people, are very guarded. I observed that and I'm sure you have, too, but I assume Wharton is not being guarded. He's

not trying to help the defendants. It just doesn't come out very clearly.

You want to infect this record on what is really tangential stuff even if you are right.

MR. VELIE: I don't believe it is tangential.

THE COURT: If this case turns on this, believe me, the Government must really be in bad shape. I certainly don't think you are going to admit that. I don't think you necessarily should.

MR. VELIE: Very well.

THE COURT: I just don't buy it. I don't see it at all.

Maybe it turns out that Kurek was the fellow who could have told us this, but you never asked him.

MR. VELIE: We will make an stab at that, your Honor. I don'tknow if he's going to be able to recall this meeting himself. We will just see, your Honor.

THE COURT: This man certainly struck me as being not very helpful toyour case.

No, I'm sorry. After listening to this I will pass my amazement that the defendants would even object to it because I think it is helpful to them. Be that as it may, that's their mission, not the Court's. Therefore, they do object to it andIsustain their objection.

Mr. Velie, we have wasted -- we haven't wasted, but we have taken a lot of time.

What about it? What's your next witness?

MR. VELIE: I have Mr. Frommer.

THE COURT: Oh, yes. All right. We will get our jury in. If you could locate him, I assume he's right outside.

MR. MARTIN: We are going to have some objection to Mr. Frommer's testimony, your Honor. This is what you had ruled on about --

THE COURT: I have already ruled on that. If Mr.Velie didn't understand that, I would be surprised.

Perhaps Mr.Frommer, inother words, is going to testify to something else.

MR. VELIE: Excuse me, your Honor. I don't want to -- before the jury comesin, I firmly understand y our fuling to be not to elicit the fact from this witness what he would have done.

THE COURT: Exactly. I want no opinions from him.

MR. VELIE: No opinions whatever.

MR. STILLMAN: I wonder whether Mr.Velie will say whether the witness will testify to conversations with either defendant. Maybe that will help us --

THE COURT: Mr. Stillman, please. You are just badgering me. You may not intend to do it. It is not my mission to prepare the Government's case nor to help defense counsel meet the Government's case.

MR. STILLMAN: I do appreciate that. You know I would never do such a thing.

THE COURT: I know you wouldn't. That is why

I am astonished to hear such sentiments coming from you. I don't understand you.

(Jury present.)

A R T H UR F R O M M E R, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR. VELIE: May I proceed,your Honor?

THE COURT: Surely.

DIRECT EXAMINATION

BY MR. VELIE:

Q Good afternoon, Mr. Frommer.

A Good afternoon.

Q You are, are you not, sir, the Arthur Frommer who is the author of various travel guides called "Europe on Five Dollars a Day," or "Europe on Ten Dollars a day," is that correct?

A Yes.

Q And various other travel literature?

A Yes.

Q Was there a time when you owned the business that put out those books?

A Yes, up until October of 196[illegible]

Q What happened in October of 1969?

A On October 9 of 1969 we had the closing of the

acquisition of our companies by National Student Marketing that had been contracted for in June of 1969.

Q Incidentally, how are you presently employed?

A I am employed by the companies that were sold to National Student Marketing.

Q All right. Tell me, Mr.Frommer, what did you get for your companies? What was the negotiated price?

A We received stock for our tour operation, our tour wholesaler and also for one of our publishing companies and we received cash for the other publishing company.

Q What was the stated dollar value of the stock at the time that you closed the deal, if you recall?

A The stock amounted to 125,000 shares which had a value of under $5 million or slightly under $5 million.

Q How much cash?

A $500,000.

Q Did you receive certain financial information with respect to National Student Marketing Corporation prior to your signing an agreement to be acquired?

A Yes. We had received the 1968 annual report of National Student Marketing Corporation.

Q Incidentally, sir, you are a lawyer, are you not, sir?

A Yes, I am.

Q I show you Government Exhibit 5 in evidence and ask you if that is another copy of the report of which you speak?

A Yes, it is.

Q All right. Incidentally, Mr.Frommer, are you able to tell us what it was that attracted you to National Student Marketing as an acquisition partner?

MR. MARTIN: Objection, your Honor.

THE COURT: I would sustain that. That is a little broad and really isn't material.

MR. VELIE: Very well.

Q Were you interested in National Student Marketing's reach for the youth market in any way?

A Yes, we were.

Q Was that an important consideration in your mind?

A It was.

MR. MARTIN: Objection, your Honor. I still don't think it is relevant.

THE COURT: I don't think it is totally irrelevant so I will allow it.

Q All right. Did you tell us when you signed the merger agreement?

A On June 11th of 1969.

Q I show you, sir, Government Exhibit 43 for identification.

MR. MARTIN: Mr. Velie, may I see it for a minute. I may have a clutter objection, your Honor.

(Pause.)

Q Mr. Martin has pointed out that Exhibit 43 is reproduced in theproxy statement itself. Can you tell us what Exhibit 43 is that you have right in frnnt of you?

A This is the agreement for the acquisition of our tour company, $5 A-Day Tours, by National Student Marketing.

Q And the second pamphlet?

A The second pamphlet is the agreement for the acquisition of one of our publishing companies, the Frommer-Pasmantier Publishing Company.

Q Is it fair to say that those are the execution copies of the acquisition agreements signed in June, in other words, the actual signed agreements?

A Yes.

Q Is that your signature in there and Mr. Randall's signature and so on?

A Yes, it is.

Q All right.

MR. VELIE: Actually there is no point in

offering this, counsel, since another copy of it is in.

I would like to read at this point Paragraph 7C of the acquisition agreements.

MR. MARTIN: There are so many agreements, Mr. Velie. Could you just let me see that?

MR. VELIE: 7C of $5 a day tours agreement.

(Pause.)

MR. VELIE: It reads as follows:

Paragraph 7 begins:

"NSMC represents warrants and agrees as follows:

"C, the consolidated financial statements of NSMC as at August 31, 1968, contained in its 1968 annual report to stockholders certified by Peat, Marwick, Mitchell & Company and the unaudited consolidated statement of earnings as reported to its shareholders for the six months ended February 28, 1969, prepared by NSMC are true and correct and fairly present the financial position of NSMC and its subsidiaries as of such dates and the results of their operations for the periods then ended subject, in the case of the six-month statement year end audit adjustments."

Q There is a comparable agreement and warrant in the companion document, is that fair to say?

A Yes.

Q Is that a clause that your lawyer negotiated for

you for your protection?

A I would assume it was.

MR. STILLMAN: I move to strike it, your Honor.

THE COURT: Yes. I will strike that.

Q Prior to the closing of your acquisition, the acquisition of your companies, which occurred in October of 1969, did you receive a proxy statement?

A Yes, we did. We received a copy of the final printed version of the proxy statement.

Q I show you Government Exhibit 44 for identification, Mr.Frommer. Do you happen to be able to remember that particular document?

A Yes, this appears to be the document that we received.

Q All right. Do you recall if that is the document that you brought to the United States Attorneys Office?

A We provided you with a copy of the document that we have in our files.

Q I show you the one that is in evidence, sir, just so we are all lined up.

MR. VELIE: Unless counsel will concede it is identical to Exhibit 25 in evidence, is that all right?

MR. MARTIN: If it is,that is all right with me. I am going to use 25.

MR. VELIE: Right. They are identical except that 25 is a certified copy with a file marker on the front.

Q Mr. Frommer, did you have occasion to read in the financial statements in the proxy?

A Yes, I did. I read the statement before the meeting.

MR. STILLMAN: Can't hear you, sir.

MR. VELIE: He read the statement before the meeting.

Q I show you Government Exhibit 45 for identification. Can you identify that?

A Yes, this is one of the documents that was executed and delivered to us on the date of the closing of our acquisition. I do recognize this.

Q It is signed by Mr. Randall in each instance, is that correct?

A Yes.

MR. VELIE: I will offer it.

End 4B

MR. MARTIN: Question on the voir dire, your Honor?

THE COURT: Are you offering this, Mr. Velie?

MR. VELIE: Yes.

VOIR DIRE EXAMINATION

BY MR. MARTIN:

Q Mr.Frommer, at the time that you received this document, 45 for identification, was Mr. Natelli, the man who sits the second chair over, who is raising his hand s tand up, Mr. Natelli -- was he present at that meeting?

A I don't think so. I don't think I have ever m et Mr. Natelli.

Q You never met him?

A I don't think so.

MR. MARTIN: Objection, your Honor.

MR. STILLMAN: Your Honor, I am sure I could go through the same exercise. I make the same objection.

THE COURT: I don't think the Government is contending that Mr. Frommer met either one of the defendants. Isn't that so?

MR. VELIE: That is correct, your Honor. We are not.

THE COURT: May I see this document.

The objections are overruled. This will be

received.

xxx (Government Exhibit 45 was received in evidence.)

MR. VELIE: Gentlemen, I am going to read the third full paragraph on the first page.

(Mr. Velie read from Government Exhibit 45 in evidence to the jury.)

Q It is dated October 9,1969. That was the date of the closing, is that correct, sir?

A Yes.

Q Were you able to determine from theproxy statement or from any other communication made to you that $1 million of National Student Marketing's 1968 sales had been written off?

A No.

Q Anybody tell you that without unbilled account receivable sales which had been written off the company had had a loss in 1968?

A No, they didn't.

MR. MARTIN: Objection. The statement is inaccurate, your Honor. I object to the question.

THE COURT: Start over again, Mr.Velie, and rephrase it.

MR. VELIE: Very well.

Q Did anybody ever tell you that almost $1.4 million of $1.7 of unbilled accounts receivables were written off by the company?

A No, they did not.

Q That without the unbilled account receivables 1968 was a loss year for National Student Marketing?

MR. MARTIN: Objection, your Honor.

THE COURT: I think the answer to the first question is sufficient. I don't know what the basis of Mr. Martin's objection is, but that is my basis for agreeing with him. I don't think that is necessary.

Q Did anybody tell you, Mr.Frommer, that of $3.3 million of unbilled accounts receivables booked on a 18-month period over $2 million had been written off as uncollectable and no good?

MR. STILLMAN: Y our Honor, are we having summations now? I object to this.

THE COURT: Again, Mr.Velie, the answer which has already been received and allowed is sufficient unto the day on the subject of unbilled acconnts receivable.

MR. VELIE: Your Honor, the second question focuses on Paragraph 4 of theindictment.

THE COURT: I understand. I am sure you intend it that way. But that is, again, sufficient unto the day.

The witness has already answered that he didn't know that about 1.7 million had been written off.

MR. VELIE: I have referred only thus far to '69 sales, your Honor.

THE COURT: I understand that.

MR. VELIE: Very well.

Q Did the deal close that day?

A Yes, it did.

MR. VELIE: You may inquire.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Frommer, my name is John Martin.

A Yes, sir.

Q We have never met?

A That's right.

Q In fact, did you refuse a request to meet me, sir?

A My attorney responded to a request to meet apparently with you or with someone in your firm.

Q Now, sir, you are, yourself, a lawyer, is that correct?

A Yes, I am.

Q When did you graduate from law school?

A In 1953.

Q What law school was that?

A Yale University Law School.

Q After graduating from Yale University Law School what did you do, sir?

A I entered the Army in 1953, and served in the Army overseas from 1953 to 1955.

Q Did there come a time when you began to engage in the practice of law here in the city of New YOrk?

A Yes, upon leaving the Army in 1955.

Q You at that time became associated with the firm of Paul Weiss, Rifkind, Wharton & Garrison?

A That's right.

Q The name has changed somewhat over theyears back and forth, but that is basically the firm?

A Yes.

Q Is it fair to say that Paul Weiss is one of the larger and more prestigious firms in the City of New York?

A Yes, it is.

Q How long were you with Paul Weiss, sir?

A I was with Paul Weiss for approximately seven years until I left to devote full time and attention to my activities in the travel industry.

Q What area of the law did you specialize in, sir?

A I was in litigation.

Q In litigation did you have occasion to deal with

questions involving financial statements?

A Actually very little, no.

Q Did you have any occasion as a litigator to come across situations where there had been mergers or acquisitions that subsequently became the subject of litigation?

A I don't recall having been in a litigation involving a merger or acquisition.

Q Let me ask you this, sir: Did you read the documents which you executed and Mr.Velie has referred to today?

A Yes, I did.

Q Were those documents, sir, the subject of negotiation between yourself and your attorneys on your side and Mr. Randall and his attorneys on his side?

A Yes, they were.

Q He was represented by the firm of White & Case?

A Yes.

Q That is, like Paul Weiss, one of the larger and more prestigious firms in the city, is that right?

A Yes, it is.

Q Did your firm have at that time an accountant who worked with you?

A No, they did not use an accountant for our acquisition.

Q Before you went throughwith this acquisition,

did you have an accountant who prepared the books and records of your firm?

A Yes, we did.

Q Who was that?

A Well, there were two accountants. The accountant who did our monthly statements was Richard Orin of Joseph N. Kleinman & Company, and the audited statements were done by Haskins & Sells.

Q Haskins & Sells is a firm of certified public accountants which is, like Peat, Marwick, one of the big eight, is that right?

A It is a very, very prestigious firm.

Q I want to show you, sir, a provision contained in the agreement negotiated between your companies. It is Schedule E.

MR. VELIE: Just give me the page of your proxy statement.

MR. MARTIN: It is not that easy. The schedules are on numbered pages.

MR. VELIE: Let me catch up with you.

MR. MARTIN: They are all part of the appendix in the back. You get a schedule and the schedule within itself is numbered Schedule E.

MR. VELIE: Schedule E.

MR. MARTIN: Right.

MR. VELIE: Got it.

End 5A

Q Would you identify schedule E, sir.

A Schedule E is the agreement whereby the Frommer Pasmantier Publishing Corporation was acquired by NSMC.

Q The Frommer-Pasmantier Publishing Company which you had an interest in, is that correct?

A Yes, itwas.

Q I want to show you, sir, a provision contained in paragraph 8 of that agreement. Were you familiar with that provision at the time?

MR. VELIE: Page?

MR. MARTIN: Page 6 of that agreement, Mr. Velie, paragraph 8.

A Yes, I am familiar with this provision.

Q It is the fact then, Mr. Frommer, is it not, that one of the things that National Student Marketing Corporation bargained for in their agreement with you was that prior to the closing they would have a right to go in and inspect all of your books and records, isn't that right?

A Yes, they did.

Q Did you on your side seek a corresponding right to have yourself or your accountants go in and examine all of the books and records of National Student Marketing Corporation?

A I don't recall whether we did. If you could tell

me whether such a provision exists in the agreement --

Q My reading says that it does not, but I am not a corporate lawyer either, Mr. Frommer, I am a litigator.

MR. MARTIN: Will you agree that there is no such provision in it, Mr. Velie?

MR. VELIE: If you say so. If it is here it will be found ultimately. Suffice for now you represent that it doesn't. That will satisfy me for now.

Q Mr. Frommer, are you familiar with the term comfort letter?

A I am now familiar with the term.

Q Did you or your attorneys on your behalf request from Mr. Randall or anyone associated with National Student Marketing Corporation a comfort letter from Peat, Marwick and Mitchell with respect to the unaudited figures for February 28, 1969 which youwere given?

A No, I don't think that we did, and I don't recall having received any such comfort letter.

Q You didn't request it?

A From Peat Marwick, no.

Q You didn't request it and that was not one of the things that went into this bargain that you made, is that correct?

A That's correct.

Q Did Mr. Randall tell you on the day he signed that is now Government's Exhibit 45 that subsequent to the time that the original February 28, 1969 financial statements were prepared Mr. Natelli insisted that a contract for approximately $1 million that had been recorded in those February 28, 1969 figures be written off on the books of National Student Marketing Corporation?

A No, he did not inform me of any such thing.

Q Did he tell you, sir, that the effect of that write off was to reduce the income of National Student Marketing Corporation for the period ended February 28, 1969 by over $500,000.

A No, he made no mention of that.

Q And you had not requested a comfort letter from Peat, Marwick on those figures, is that correct?

A No, we had not.

MR. MARTIN: I have nothing further, your Honor.

THE COURT: Mr. Stillman.

MR. STILLMAN: Nothing, your Honor.

THE COURT: Mr. Velie.

MR. VELIE: If I am not mistaken, you are speaking about the Pontiac commitment, Mr. Martin.

MR. MARTIN: That's correct.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Were you able to find anywhere in the proxy statement its any reference to the fact that the Pontiac commitment had been deleted in the amount of $1 million?

A There was no reference of any scrt.

MR. VELIE: Thank you. You may go.

THE COURT: Thank you, Mr. Frommer. You may be excused, sir.

THE WITNESS: Thank you very much.

(Witness excused.)

L O U I S F. S C H A U E R, called as a witness on behalf of the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

MR. VELIE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. VELIE:

Q Mr. Schauer, how are you employed, sir?

A I am a partner in the law firm of Lord, Bissell & Brook in Chicago.

Q In that capacity did you have occasion back in 1969 to represent the Interstate National group of companies?

A Yes.

Q With respect to a proposed acquisition by National Student Marketing?

A yes.

Q Is it fair to say, just to cut this short a little bit, that Interstate basically was in the insurance business?

A Yes.

Q Had 1300 shareholders?

A Yes.

Q Thereabouts?

A Yes, approximately.

Q Do you have a recollection of the earnings of the Interstate group of companies in its last year before it was acquired by National Student Marketing?

A No, I don't.

Q I am going to show you page 33 of Government's Exhibit 25, the proxy statement in evidence in this case, and ask you if that refreshes your recollection as to what Interstate's earnings were in its last full year before acquisition?

A Yes.

Q What is your recollection?

A The final earnings here show a little over 600,000, $637,000.

Q Would you tell us in laymen's terms, in English,

really, what the consideration for the acquisition by National Student Marketing was?

In other words, what were the shareholders of Interstate going to get when they gave up their ownership of Interstate?

A The Interstate shareholders were each to receive two-thirds of a share of National Student Marketing common stock for each share of Interstate common stock held.

Q So it is what you call a stock for stock acquisition, is that correct?

A No.

Q Do I have it wrong?

A No, it was a merger, but the result was that the Interstate shareholders got stock of National Student Marketing.

Q Apart from the stock, did they get anything else?

A No.

Q Did you attend any meetings of Interstate Board members or others looking toward evaluating being acquired by National Student Marketing?

A Yes.

Q I call your attention to August 12, 1969 or thereabouts. Do you recall a meeting on that day?

A Yes.

Q Who was there?

A It was a meeting of the Board of Directors of Interstate National Corporation and so the -- all but I think one of the directors were there, as well as a few other people, including myself.

Q What was the business of that meeting?

A The business was to -- primarily to discuss two things.

One, the proposed agreement between Interstate and National Student, and also to get a report from a representative of White, Weld on their examination of the proposed agreement and there evaluation.

Q What is White, Weld?

A It is an investment banking company.

Q Is it fair to say that you had hired a specialist to see if National Student Marketing appeared to be a good person to be merged with?

A Interstate management had hired them, yes, sir.

Q Did a representative of White, Weld deliver a report to your meeting?

A Yes. Tony Bishoff of White, Weld delivered a report that day.

MR. VELIE: Would you mark this, please, as 37A, Government's Exhibit 37A.

xx (Government's Exhibit 37A marked for identification.)

Q Mr. Schauer, I show you Government's Exhibit 37A for identification and ask you if you are able to identify it for me?

A Yes, this appears to be the White, Weld report which was presented on or about that day and was discussed at the meeting of August 12, 1969.

Q That's the August 11 draft of the White, Weld report, is that correct?

A That's correct.

Q It is hot off the press because your meeting was August 12, is that right?

A That's right.

Q Do you have a recollection of what -- first of all, who was the representative of White, Weld who was there at your meeting?

A His name was Tony Bishoff.

Q What was it that Mr. Bishoff was saying, do you recall?

MR. STILLMAN: Objection.

MR. MARTIN: Objection.

THE COURT: I would think that the defendants are clearly right. That's hearsay.

MR. VELIE: Your Honor, this is not offered for the truth of the matter asserted but for the fact that it was said to these people as kind of a verbal account that they relied on.

THE COURT: So you say. I don't think we reallyneed a verbal account in this context.

MR. VELIE: Very well.

Q In any event, the White, Weld representative gave his report, is that the idea?

A Yes.

Q Do you recall any discussion at that meeting about fixed fee contracts?

A Yes.

Q Do you recall the discussion on that subject?

MR. MARTIN: Objection.

THE COURT: He says he does recall it. I'm speaking to Mr. Velie. He's already said he recalls it. What's your next question.

Q What was that conversation?

THE COURT: No, please, Mr. Velie. We can't have extra courtroom declarations like this. The verbal act theory doesn't apply here, it seems to me either.

MR. VELIE: Very well.

Q I show you Government's Exhibit 5 for identification.

Are you able to identify that?

A Yes.

Q What is it?

A It is the annual report of National Student Marketing for the -- called their 1968 annual report.

THE COURT: Incidentally, five is in evidence, Mr. Velie.

MR. VELIE: I'm sorry, in evidence.

Q Do you recall having received that prior to the August 12 meeting?

A Yes, I believe we did.

Q Do you recall discussions of aspects of that report.

A Yes.

Q Including fixed fee contracts?

A Yes.

Q Discussions about the company's internal growth, were there discussions about that?

A Yes.

MR. MARTIN: Objection, your Honor. I think what the discussions were about is no less hearsay than what the discussion was about --

THE COURT: I don't see any harm even assuming you are correct. They discussed these matters.

What is your ultimate question here, Mr. Velie?

Q In those discussions were you satisfied that the company had solid internal growth and reported accurately what its business was?

MR. MARTIN: Objection.

THE COURT: I'm going to sustain that objection.

Q Was there a continuation of that meeting on August 14, 1969?

A There was a meeting of some of the directors, yes, sir, two days later.

Q Was there a discussion at that meeting, the August 12 meeting of the Pontiac contract which National Student Marketing said it had?

A My recollection, yes.

Q Was it your understanding that National Student Marketing had a contract with Pontiac on August 12?

A Yes.

Q Goging ahead to August 14, who was at that meeting?

A There were -- let's see. Robert Tate, Chairman of the Board of Interstate, Mr. Bach, who was the general counsel, my partner, Max Meyer, myself, Don Jeffers, who was the chief financial officer of Interstate, Cortes Randall from National Student Marketing as well as James Joy and John Davies, and Cameron Brown from Interstate. There may have been another person from National Student Marketing who was administrative assistant to Mr. Randall. I'm not sure.

THE COURT: You say Cortes Randall. .Are you referring to the son or the father?

THE WITNESS: Excuse me, your Honor. The son. I'm sorry. In any of my conversations it would have to refer only to the son.

Q That long list, is it essentially most of the members of the Interstate Board plus Mr. Randall, and if somebody else was there with Mr. Randall, that other person, is that correct?

A It wouldn'tbe all of the Interstate Board. It would be -- there were four directors out of nine were there. Brown, Meyer, Tate and Bach.

Q Did you have with you at that meeting a draft of the proxy statement?

A Yes, sir.

Q Do you recall it was brought to the meeting by

Mr. Randall, if you recall?

A I don't recall how it got there, but we had --

Q I show you Government's Exhibit 32 for identification. Tell me, sir, if you can, what it is?

A This appears to be a proof of the August 14, 1969 proxy statement.

Q Why don't you leaf through it there and see if you can find any handwritings in there that you recognize?

A Well, there's -- the first one that seems to come in hand is on page 11. I believe it is my handwriting.

Q All right.

Does that help you identify this as the proxy statement which was with you on the 14th of August?

A Yes, I believe it does.

Q Very well.

Was there discussion about the proxy statement at that meeting?

A Yes.

Q Were you going through it together, is that the idea?

A Yes.

Q Asking questions?

A Yes.

Q Looking at figures?

A Yes.

Q Trying to decide whether the Board would vote the merger or not?

A No, I don't think that was -- no, I don't think that's correct.

Q Had the Board voted yet?

A The Board at its August 12 meeting had agreed in principal to it -- to sign the agreement provided that the financial information which was lacking was produced and was consistent with their understanding on that date.

Q All right. What was the financial information for the most part that was lacking on August 12?

A We were lacking a good deal of the numbers concerning the National Student Marking's nine-month figures ended May 31, 1969.

Q All right.

You were waiting for that information, is that correct?

A Correct.

Q Did there come a time when Mr. Randall left your meeting on the 14th to see if he could get some further information for you about those nine-month financials?

A I know he left our meeting. I am not clear in my mind as to whether that was the total purpose of his leaving.

Q Thereafter and late in the night on August 14, did you receive information over the telephone from New York City with respect to that financial information?

A Yes.

Q Was that information noted down in pencil in that draft?

A Yes, I believe that is correct.

Q All right. Some of it appears at Page 11, numbered Page 11 of this draft, is that correct?

A Yes.

Q All right. Do you recall, was there a discussion that evening about the historical performance of National Student Marketing over thepast several years in its economic performance with reference to the numbers?

A Well, I --

Q If you recall.

A I can't recall really.

Q VEry well. Following your receipt of that information did the final board vote take place at some time thereafter?

A The contract was signed thereafter.

Q All right. Did you and the Interstate board members receive a final proxy following that?

A Yes.

Q It looked like this, Government Exhibit 25 in evidence?

A Yes. The final one that I had I thought was on different paper than this.

Q That is a certified copy, sir. It may well have been on tissue paper or thinner paper, is that the idea?

A Yes.

Q It otherwise looked like that?

A It is bound on the ends and it was -- I don't know if this is the final -- it reads as the final draft, I mean the final.

Q Did your final proxy look more like Government Exhibit 44 for identification?

A That is it.

Q That is it. Okay.

THE COURT: Excuse me, Mr. Velie. How much further do you have to go?

MR. VELIE: I think I can complete the direct within three or four minutes, your Honor, and we will be finished for the day, I take it.

Q I show you Government Exhibit 37 for identification. Do you recognize that?

A Yes.

Q Is that the final White, Weld report?

A Yes, sir.

Q Did you receive that thereafter and before the closing?

A Yes, sir.

Q This differs from the prior draft in that it includes an analysis to some extent or at least it included a reference to the fact that they have analyzed the proxy statement, is that correct?

A Yes, sir.

Q I call your attention to October 31, 1969. That was the date of the closing, is that correct?

A Yes,sir.

Q Did you go to the closing?

A Yes.

Q Where was it?

A A conference room at the law firm here in New York of White & Case.

Q All right. Can you tell us who was there without listing every name? Were there Interstate board members there?

A Yes.

Q Were there White & Case lawyers there?

A Yes.

Q Were there Lord, Bissel & Brook lawyers there?

A Yes.

Q Some other people?

A National Student Marketing.

Q National Student Marketing people?

A Yes.

Q Who was there for National Student Marketing?

A Cortes Randall, John Davies, Jim Joy.

MR.STILLMAN: Did you ask him if anyone was there

from Peat, Marwick?

Q Were there any accountants from Peat, Marwick, Mitchell there?

A No.

Q Have you ever met Mr. Natelli or Mr. Scansaroli? Do you know these gentlemen?

A I don't believe so. There was one meeting in June or July where we talked about a possible vehicle making the deal where Mr. Natelli may have been present when I was there, but I don't really remember.

Q Do you recall the business of the closing taking place that day?

A Yes.

Q During the closing do you recall being furnished a comfort letter?

A I received a draft.

Q You received a draft of the comfort letter?

A Yes.

Q I show you Government Exhibit 33 for identification and ask you, sir, ifyou can identify that as the draft of the comfort letter that you received?

A Yes.

Q Did you review it when you received it?

A Yes.

Q Did you read the entries in there?

A Yes.

Q A downward adjustment of I believe $500,000 or thereabouts for deferred costs?

A Yes.

Q Is the $200,000 for receivables?

A 300,000.

Q 300,000 for receivables?

A Yes.

Q All right. And $84,000 for capitalized costs?

A Yes.

Q Each of those a downward adjustment?

A Yes.

Q Did you have occasion to have a huddle with the other Interstate people to discuss this?

A Yes.

Q Were you told certain things about it by the National Student Marketing representatives who were present?

A Yes.

Q What were you told?

MR. STILLMAN: Can we find out who was now the speaker?

Q Who from National Student Marketing said something to you about the comfort letter?

A Cortes Randall.

Q Do you recall what he said?

MR. MARTIN: Objection.

MR. VELIE: Very well, I will drop it.

Q Tell me --

THE COURT: Mr. Velie, may I suggest that three and four minutes have long gone and among your many attributes you aren't a good estimator. I suggest that defense counsel are going to be spending some time with Mr. Schauer and another case is waiting, I am sorry to say. Am I right in that?

MR. MARTIN: Yes,your Honor.

THE COURT: I am sorry. I think we better mspend now, which is the usual time, as I have told the jury, in any event.

Mr. Light, and ladies and gentlemen, tomorrow we will sit in the morning. I have another case early in the morning, I hope to be finished. But just to make sure, don't come in until 10:15 in case I run over a little bit. Then we will quit at lunchtime, you understand, at 1:00 o'clock. You will be free inthe afternoon. I think we will get quite a bit done and I appreciate your willingness to come in tomorr

(Adjourned to Friday, November 1, 1974, at 10:15 A.M.)

United States of America

vs. 74 Cr. 43

Anthony N. Natelli and
Joseph Scansaroli

New York, New York.
November 1, 1974 - 10:15 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: Good morning, gentlemen, one juror is missing. Is there any business we can dispose of now while we are waiting?

MR. VELIE: Yes, your Honor. The Government has a pending offer of a portion of Exhibit 21. If I am not mistaken, I believe it is Page 3120, which has been identified as a memorandumin the handwriting of Mr. Natelli. In this connection,your Honor may recallthis memorandum was mentioned twice by Mr. Martin in the course of the trial, once in his opening and once during the cross-examining of one of my witnesses. The Government has offered it as being authenticated as a portion of Peat, Marwick's work papers and authenticated --

THE COURT: When did you offer this? I don't recall this came up yesterday.

MR. VELIE: It did, your Honor. I offered it because Mr. Johnston was able to say whose handwriting it was. He found it, of course --

THE COURT: That is the one we deferred.

MR. VELIE: Yes, exactly.

THE COURT: I beg your pardon.

MR. VELIE: It is offered as a party admission and fully authenticated and plainly relevant in view of not only our case but Mr. Martin's various statements about it.

THE COURT: Wait a minute. You have refreshed me. I know exactly what you are talking about now.

MR. VELIE: If I may, I am going to pass it up (handing).

(Pause.)

THE COURT: I don't understand necessarily there is any objection to this, is there, Mr. Martin?

MR.MARTIN: Yes, there is, your Honor. The objection is not as to authenticity but relevance. It seems to me without some testimony -- nobody here has identified when this was prepared, what it was prepared in relation to.

Without that type of testimony, your Honor, the document is not relevant.

THE COURT: I am sorry, I don't agree. It is true that there is no date shown, but it is quite clearly identified as to what it is about.

MR. MARTIN: Your Honor, the problem with that is the testimony of Mr. Buck, among others, I believe established that there were two different matters with regard to the Eastern contract that were under consideration at various times.

One was the question of whether or not you could simply not change the figure in the proxy, but let them go really with the Pontiac numbers because you had an Eastern contract in almost the same amount.

THE COURT: That is all interesting detail, but that really doesn't go to the admissibility question, as I see it.

It is quite apparent what this is about. The handwriting is clear, the contents are reasonably clear.

With Item No. 3, it is almost apparent to an outsider at about the time when this must have been prepared.

MR. MARTIN: Your Honor, I think the evidentiary value of this depends on which of the two context it was prepared in.

THE COURT: That doesn't necessarily mean again that it doesn't get admitted. You are perfectly free to

develop that.

MR. MARTIN: I think there needs to be some evidentiary basis,your Honor, to make it relevant to the issue which Mr.Velie is trying to prove through this, and that is that simply this was done solely onthe question of putting Eastern in at all and not as to this switch without changing the proxy numbers.

THE COURT: Again, all of that is perfectly fair to argue. More than that, there may be various factual matters which are not in evidence already about this, but which could be put in evidence and so on and so on. That isn't necessarily the test of admissibility as I see it.

The objection is overruled, 21 will be received.

MR. STILLMAN: Do I understand, your Honor, from Mr.Velie's statement that the document is being offered with respect to Mr. Natelli?

THE COURT: I had so understood it. It is a fair question. What about that?

MR. VELIE: Yes, your Honor. It is admitted as a party admission with respect to Mr. Natelli's understanding of this matter.

THE COURT: All right.

xxx (Government Exhibit 21 for identification was received in evidence.)

MR. STILLMAN: Your Honor, I could take up one other matter before the start --

THE COURT: Yes. Would you bear with me just a moment, Mr.Stillman.

(Pause.)

THE COURT: Yes, Mr. Stillman.

MR. STILLMAN: Your Honor, at this time I would like to move to strike the testimony of Arthur Frommer, the testimony that we have heard thus far from Mr. Schauer and to register my objection to the testimony of the witness Donald Jeffers, who will be offered, the testimony of the witness Bruce Ritzenthaler, which will also be offered this morning.

THE COURT: I am not going to entertain that motion now. I will entertain it later.

MR. STILLMAN: All right, sir.

(Jury present.)

THE COURT: Good morning, Mr.Light, and ladies and gentlemen.

Let me just bringyou up to date on one thing that occurred in your absence.

The Government offered yesterday and we deferred the matter untilthis morning, an exhibit which has been marked and received as Government Exhibit 21. That exhibit

is a yellow foolscap page of notes stated, I believe, by the witness Johnston to be in the handwriting of Mr. Natelli. It is received only as to Natelli and not as to Mr. SCansaroli.

MR. MARTIN: Would your Honor add that that is an exhibit that was contained in part of the Peat, Marwick work papers.

THE COURT: That is certainly true.

Do you want to read this before we call in the witness?

MR. VELIE: Yes, your Honor.

(Mr. Velie read from Government Exhibit 21 in evidence to the jury.)

MR. VELIE: Thank you, your Honor.

THE COURT: Then we will recall Mr. Schauer.

L O U I S F. S C H A U E R resumed.

DIRECT EXAMINATION (continued)

BY MR. VELIE:

THE COURT: All right, Mr. Velie.

MR. VELIE: Thank you, your Honor.

Q Good morning, Mr. Schauer.

A Good morning.

Q When we broke last evening you had told us you were at the closing of the Interstate National Student

Marketing acquisition or merger meeting, is that correct?

A Yes.

Q The meeting in which the deal was to actually become final?

A Yes.

Q You identified th people being there as being representatives of Interstate, representatives of National Student Marketing, members of various law firms? Do I have that right?

A Right.

Q You told us how a letter was circulated, a comfort letter was circulated and in it it had downward adjustment to the May 1969 figures of National Student Marketing, $300,000 adjustment to receivables.

A Right.

Q Incidentally, did that mention unbilled accounts receivable, if you recall?

A I am not sure if that is the exact phrase used.

nd 1A

Q You have identified this, Exhibit 33. Take a look at paragraph 2 at page 4 of that letter.

A Yes.

Q It indicates an adjustment in receivables of $300,000 rather than unbilled receivables, is that correct?

A Yes.

Q You told us there was another adjustment of about $500,000 in deferred costs, downward adjustment.

A Yes.

Q And a $84,000 adjustment in capital costs, capital adjustment.

Q That's correct.

Q Were you or any other representative of Interstate able to determine from that letter, from anything that was said, from any published financial figures available to you up until that very moment or after that National Student Marketing had lost money in 1968?

MR. MARTIN: Objection, your Honor.

THE COURT: I'm going to sustain that as to form. You have mixed up about three questions there, it seems to me.

Q Was there any information available to you that National Student Marketing had lost money in 1968?

MR. STILLMAN: I object, your Honor.

THE COURT: You mean as of the day of the closing?

MR. VELIE: Yes, sir.

THE COURT: October 31?

MR. VELIE: Yes.

THE COURT: I will allow that.

A Would you repeat the question now.

Q Did you know at the closing that National Student Marketing had lost money in 1968?

A No.

MR. MARTIN: Objection to the form of the question, your Honor. There is no such evidence.

THE COURT: Thay may. That doesn't mean the question can't be asked. I will allow the question.

Q Your answer is no, you didn't know that, is that correct?

A Correct.

Q Did you know that of the $1.7 million of unbilled accounts receivable booked by National Student Marketing in 1968, over $1 million had been written off as uncollectible and no good?

MR. STILLMAN: I object, your Honor.

THE COURT: Overruled.

A No.

Q You didn't know that?

A No.

Q Did you know that of $3.3 million of unbilled accounts receivables booked in the 18 month period including the year 1968 and the half year of 1969, $3.3 million of unbilled accounts receivable had been booked and $2 million or more had been written off as uncollectible or no good?

MR. STILLMAN: I object to this. I submit it accomplishes the very thing that we have been trying to prevent.

THE COURT: No, Mr. Stillman. I'm sorry. I disagree.

The objection is overruled. You certainly are free to argue that these facts aren't true, in any event. That doesn't mean he can't ask the question.

MR. STILLMAN: It is something I would like to take up with your Honor --

THE COURT: No, we have taken it up quite a bit. We don't need to take it up any more.

MR. STILLMAN: Surely.

A No.

Q You didn't know that?

A No.

Q Without this information did the deal close?

THE COURT: I'm sorry. That I don't understand.

Q Did the deal close that day?

MR. STILLMAN: That wasn't the question he put a moment ago, your Honor.

THE COURT: That may be. I don't understand it. Let's put the question you want to put here.

MR. VELIE: Very well.

Q When you and the Interstate Board agreed to close the deal, did you have that information which I have been asking you about. about the two million in write offs and the one million dollars --

THE COURT: He's already answered all of that.

MR. VELIE: All right, your Honor.

Q Did the deal close that day?

A Yes.

Q Nobody told you before the deal any of these things, did they?

MR. MARTIN: Objection.

MR. STILLMAN: Repetitious, your Honor.

THE COURT: I agree. We don't need to repeat it.

Q The effect of that deal was, was it not, that the 1300 or so shareholders of Interstate gave up their investment in the insurance company and received instead shares of National Student Marketing stock?

MR. STILLMAN: Same objection, your Honor.

THE COURT: Just a moment. I will allow it. As a result of the closing, I wouldprefer you rephrase it.

Q As a result of the closing, Mr. Schauer, 1300 shareholders of Interstate gave up their investment in the insurance company and received instead shares of stock of National Student Marketing, is that correct?

A They exchanged their shares of Interstate for shares of National Student Marketing, that's right.

MR. VELIE: You may inquire, gentlemen.

xx CROSS EXAMINATION

BY MR. MARTIN:

Q Mr. Schauer, at that closing did Mr. Epley tell you next with the comfort letter that Peat, Marwick had delivered that Mr. Natelli had suggested to him that this matter should be taken to the SEC before the closing concluded?

A No.

MR. MARTIN: Can I have the draft, Mr. Velie, of the proxy?

MR. VELIE: Which one?

MR. MARTIN: The one that Mr. Schauer was looking at yesterday.

MR. VELIE: Sure.

(Pause.)

Q I show you, Mr. Schauer, what has been identified as Natelli Exhibit K and ask you, sir, have you ever seen that or a copy of that document before?

MR. VELIE: A?

MR. MARTIN: K.

A Yes.

Q When did you see it, sir?

A It was the first week of November, I think either November 4 or 5, 1968.

MR. VELIE: Excuse me, Mr. Martin. Would you bear with me until I find my copy?

MR. MARTIN: Sure.

(Pause.)

MR. VELIE: May I have the last question and answer, please?

(Question and answer read.)

Q Mr. Schauer, you are an attorney with the firm of Lord, Bissel and Brook, is that correct?

A Yes.

Q Is Lord, Bissel and Brook a rather large firm? How many lawyers, Mr. Schauer?

A At the present time?

Q Let's stick to 1969.

A 70, 75, something like that.

Q Without being immodest, is it fair to say that your firm is one of the larger and more highly respected firms in the Chicago area?

A I think we are probably the fifth or sixth largest firm in Chicago.

Q As I say, without being immodest, rather highly respected?

A I like to think so, yes.

Q Mr. Schauer, the agreement between National Student Marketing Corporation and Interstate called for Interstate to receive a comfort letter signed by Peat, Marwick and Mitchell, is that correct?

A Correct.

Q You were shown, sir, Government's Exhibit 33 for identification. Is that --

A Excuse me.

That question, it called for a comfort letter from Peat, Marwick.

Q Was Government's Exhibit 33 for identification, sir, signed by Peat, Marwick and Mitchell?

A No, it was not.

Q Did you ever receive a comfort letter signed by Peat, Marwick and Mitchell?

A Yes.

Q I show you Exhibit K for identification and ask you are the last three pages of that the comfort letter signed by Peat, Marwick and Mitchell that you received?

A Yes, we received it.

Q Did you ever receive any other comfort letter signed by Peat, Marwick and Mitchell?

A No.

MR. MARTIN: I offer Exhibit K for identification

in evidence, your Honor.

MR. VELIE: Your Honor, the evidence here indicates that this was received a full four or five days after the closing and therefore it is irrelevant to his state of knowledge at the closing.

Accordingly, it is objected to.

THE COURT: Before we get to that, apparently this is a cheaf of papers only part of which are the comfort letter, right?

MR. MARTIN: I believe the witness testified they were all received together and I think your Honor will see the relation by the first pages to the rest.

THE COURT: I am not seeking to quarrel with you or the witness. What I am trying to find out is do you really want the entire group to go into evidence, and I gather now the answer to that is yes.

MR. MARTIN: Yes.

THE COURT: All right. If you were objecting, Mr. Velie, I am going to overrule that objection. You can make any arguments you want, but that doesn't mean that this document doesn't come into evidence.

MR. VELIE: Let me have one brief question on voir dire if I may.

THE COURT: No, no. I have already ruled. It

is received.

xx (Defendant Natelli Exhibit K received in evidence.)

MR. MARTIN: Your Honor, may I read Defendant Natelli Exhibit K to the jury?

THE COURT: Yes.

MR. MARTIN: The first page of Defendant Natelli Exhibit, ladies and gentlemen, is a letter on the letterhead of Peat, Marwick, Mitchell and Company, dated November 3, 1969.

MR. VELIE: Excuse me. The date, Mr. Martin?

MR. MARTIN: November 3, 1969.

(Mr. Martin read from Defendant Natelli Exhibit K in evidence.)

MR. MARTIN: Now, I would like to read a portion of the letter on the letterhead of Peat, Marwick, Mitchell and Company, dated October 30, 1969.

MR. VELIE: Have you skipped something there?

MR. MARTIN: Yes.

MR. VELIE: You skipped the transmittal letter dated October 31, is that correct?

MR. MARTIN: Yes.

(Mr. Martin read from Defendant Natelli Exhibit K in evidence.)

Q Is it true, Mr. Schauer, that the people who attend

the closing at the offices of White and Case were aware at the time they decided to proceed with that closing that National Student Marketing Corporation as of May 31, 1969 had no earnings?

A I am not certain if that's correct.

Q Those people had received the proxy statement, had they not, sir?

A Yes.

Q And that had the financial statements of National Student Marketing in it, did it not, sir?

A Yes.

Q Thosefinancial statements showed, did they not, sir, --

MR. VELIE: Page?

Q Would you give Mr. Velie the page.

A 21.

Q -- earnings of some $700,000, is that correct?

A As of the --

Q As of the nine-month period May 31, 1969, the bottom line was $700,000 in profit, isn't that correct?

A Approximately, yes.

Q And the draft comfort letter that you received at the closing showed adjustments to that that totaled $884,000, isn't that correct?

A That's right.

Q So the figures that were available at that point would indicate that for the nine-month period National Student Marketing had a loss of $184,000, isn't that correct?

A I am not sure. I don't know what the tax impact is on that.

Q We are talking about the bottom line, aren't we, sir?

A Yes, but I am not certain how you take into account how that $884,000 was taken in and if you take it out what the tax impact is.

I am not sure. Maybe you can, but I don't know.

Q Maybe we will wait for an accountant with that question. I think it is a wash. We won't go into it between you and I.

MR. VELIE: I would like to have that remark stricken, please.

THE COURT: I think it is unnecessary. We will disregard it. Next question.

Q So it is clear that the final comfort letter, the one that was signed by Peat, Marwick and Mitchell, pointed out the fact that there was a loss after nine-months?

A Yes, sir.

Q Mr. Velie showed you the other day a draft of the proxy statement which you said you reviewed with others in

August, is that correct?

A Yes, sir.

Q There were several copies of this draft given to various people associated with the Interstate Corporation, isn't that correct?

A I believe that's right. I know we had distribution in our firm.

Q That draft has some figures written in, does it not, sir, in pencil for the nine-month period ending May 31, 1969?

A Yes.

Q Would you tell the ladies and gentlemen of the jury what the total sales figure was for the nine month period that is written in in that draft?

A For 1969?

Q That's correct, the total sales figure, sir.

A Yes. Net sales, which has two entires, aggregates in this handwritten note $11,825,877.

Q The final proxy that you received, what did that show for total sales for the nine-month period?

A It shows 11,313,569.

Q That is a reduction in sales of $500,000, isn't that correct?

A Approximately.

Q And the figure given there, sir, for net earnings, in your draft what is that figure, sir?

A This says 988,720.

Q And the figure that is given in the final proxy is what, sir?

A 702,270.

Q That is about $286,000 less, isn't it?

A Yes.

Q Were you told, sir, that thoe reductions of $500,000 to sales and over $285,000 to profit, resulted from the fact that Peat, Marwick, Mitchell insisted that the Pontiac commitment be written off from National Student Marketing?

MR. VELIE: Excuse me. Told by whom, when, where, in the proxy?

Q Told by anybody at any time prior to the Interstate closing?

A No.

Q Were you told that the reduction of earnings by $285,000 was the result of write offs insisted upon by Peat, Marwick, Mitchell?

A No.

Q You told us that at the meeting you had with White Weld there was discussion of the Pontiac contract, is that

correct?

A Yes.

Q Was there discussion at that meeting of the fact that the representatives of White, Weld had contacted the people at Pontiac and been assured that they planned to use National Student Marketing services for the amount of approximately $1 million?

A That's my recollection.

MR. VELIE: I thought this was objected to when I tried to bring it out.

MR. MARTIN: He was asked --

THE COURT: We won't argue it. It is out.

MR. VELIE: Happy to have it.

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Q Did anybody tell you prior to the closing that Mr. Natelli insisted that that contract not be put in the proxy figures because there wasn't a binding written commitment for that Pontiac contract?

MR. VELIE: Objection. This does not go to his knowledge and is purely argumentative.

THE COURT: Again, I am sorry, Mr. Martin, I will have to have that read back. It makes no sense to me.

(Question read.)

THE COURT: I believe you already answered that nobody told you anything about Peat, Marwick or Mr. Natelli taking such a position. Am I not correct?

THE WITNESS: That is correct, your Honor.

THE COURT: So I don't see why we have to repeat that one.

Next question.

MR. MARTIN: If your Honor will just give me a moment to review my notes. I may not have any.

Q Mr.Velie asked you about the rate of exchange of Interstate shares for National Student Marketing shares, is that correct?

A Yes, sir.

Q Was it correct that Interstate was being offered

in terms of market value in NSMC shares twice the market value of its shares?

A Yes.

MR. MARTIN: Thank you, Mr.Schauer.

MR. STILLMAN: One or two.

CROSS-EXAMINATION

BY MR. STILLMAN:

Q Mr. Schauer, do I understand that the conversations that you had with anybody at this closing did not include any conversations with anyone from Peat, Marwick, Mitchell, is that right?

A That's right.

MR. STILLMAN: Mr.Scansaroli, will you stand up a minute, please.

Q Do you know that gentleman?

A No, I don't.

Q Did you ever talk to him in your life?

A I don't believe I have.

Q Tell me, with all this information coming out on or about October 31, 1969, did you or anyone from your firm or anyone from Interstate call anybody at Peat, Marwick, Mitchell?

A On October 31?

Q Right, sir.

A I don't think anybody who was at the closing did. Certainly no one from my firm.

Q The fact of the matter is that your conversations on that day with respect to this comfort letter and information contained in it were either with Cortes Randall, the son, right --

A Right.

Q -- Mr.Epley from White & Case, and any other White & Case type lawyer, is that right?

A It would be with the NSM representatives present, which would include Mr. Randall, and theWhite & Case lawyers, that is correct.

Q Was a man by the name of Joy there, James Joy?

A Yes, sir.

Q Is that right?

A Yes,sir.

Q By the way, does your firm continue to do any legal work for National Student Marketing Corporation or Interstate?

A We don't do work for NationalStudent. We do I believe continue to do work for Interstate, the insurance companies.

MR. STILLMAN: Thank you, sir. I have nothing further.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr.Schauer, Mr. Martin was reading this letter. I am going to ask you, this letter that Mr. Martin was reading, Natelli Exhibit K, was dispatched to you four days after the closing, wasn't it? November 3 and the closing was October 31.

A I don't know whenit was dispatched,but it was dated November 3, that's right.

Q The enclosure of this letter sent to you four days after the closing, the comfort letter read by Mr. Martin, that is dated October 30, isn't it, 1969?

A Yes.

Q When you were at the closing were you informed that the comfort letter was still being worked on down at the Peat, Marwick office and that they were going to telephone it in? Do you recall that?

A At what point in time?

Q During the closing on October 31 were you aware of the fact that the comfort letter was still being prepared?

A Yes.

Q Can you tell us how the comfort letter got dated back to October 30, the day before, the one that was sent to you four days later?

A I have no idea.

Q Incidentally, Mr. Martin read you some of this language here:

"Nothing has come to our attention which caused us to believe that the NationalStudent MarketingCorporation's unaudited consolidated financial statements for the nine-month period ended May 31, 1969, would require any material adjustments for fair and reasonable presentation of the information shown."

I have stopped in the middle of a phrase, Mr. Martin, which goes on to say the exceptions which were read to you, a $500,000 deferred cost, $84,000 capital cost and 300,000 of receivables.

This letter doesn't tell you, does it, that $1 million of sales of the period ended May 31,1969 were written off too and not just $300,000, does it?

A That's right.

Q It doesn't tell you that when that $1 million contract was written off a substitute contract came into being at three o'clock in the morning at the printer's plant while they were putting together the figures, does it?

MR. MARTIN: Objection, argumentative.

THE COURT: Sustained as to form.

Q Is there anythingin this letter about the sub-

stitute contract, the Eastern Airlines contract, which was plugged into these figures when the Pontiac contract came out?

MR. MARTIN: Objection, your Honor.

THE COURT: Sustained as to form.

Q Does this letter inform you that there was a substitute contract for the $1 million contract it doesn't tell you was written off?

MR. STILLMAN: I don't understand that question.

THE COURT: Sustained as to form.

Q Anything in here about an Eastern Airlines contract?

A No.

Q Anything in here about the fact that Eastern Airlines contract first saw the light of day at three o'clock in the morning?

MR. STILLMAN: Your Honor, I really object to this.

THE COURT: Sustained. We don't have to go into that.

Thank you,Mr.Schauer. You may be excused.

MR. MARTIN: I am sorry, your Honor. In light of the redirect, one or two brief questions.

RECROSS-EXAMINATION

BY MR. MARTIN:

Q Isn't it a fact, sir, that under the agreement that you representing Interstate had with National Student Marketing that the Interstate people had a right to refuse to proceed with the closing until such time as they got a signed comfort letter from Peat, Marwick,Mitchell?

A I don't know that I would put it quite that way.

Q The agreement calls for a comfort letter from Peat, Marwick, Mitchell,does it not, sir?

A As a condition of the closing, that is correct.

Q And you were simply willing to rely on an oral agreement of some kind, is that right?

A No.

Q You closed without receiving the signed comfort letter, did you not, sir?

A We thought we had the comfort letter.

Q That was not from anything anybody associated with Peat,Marwick told you, was it?

A That's right.

MR. MARTIN: I would like, your Honor, to now read the other part of Exhibit K which is now in evidence.

THE COURT:Fine, but can't we excuse Mr. Schauer?

MR. MARTIN: Yes, your Honor.

MR. VELIE: Certainly.

THE COURT: Thank you, Mr.Schauer. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. MARTIN: You may recall, ladies and gentlemen, when I was reading Mr. Velie suggested I skipped a page. I would like to go back and now read that page to you. It is again a letter on the Peat, Marwick,Mitchell letterhead to Mr. J. Epley, White & Case.

MR. VELIE: It is dated October 31.

MR. MARTIN: Dated October 31,1969.

(Mr. Martin read from Defendant Natelli Exhibit K in evidence.)

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MR. VELIE: Mr. Heneghan, please.

J O H N H E N E G H A N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR.VELIE:

Q Mr.Heneghan, how are you employed, sir?

A I am employed as chief counsel at the Securities and Exchange Commission, Division of Corporation Finance.

Q Please tell the jury what the Securities and Exchange Commission is.

A The Securities and Exchange Commission is an independent agency established by Congress for the protection of investors. This is principally done through the administration of two statutes which require disclosure as to companies that are traded in the market.

Q All right. What is the division of corporation finance?

A Our function is two-fold.

One, we handle the registration statements which are filed by companies which are offering their securities to the public.

The other is that we also handle the proxy material of companies which are subject to our proxy rules.

Q In other words, you handle in some sense proxy statements required to be filed with the Commission?

A Yes.

Q Is that correct?

A Yes.

Q Does the SEC or the division of corporation finance independently investigate the truth of financial statements which are filed with theSEC?

A No.

Q Whose responsibility is it to see to it that financial statements are truthful and complete and accurate?

A I would say it is the preparer and the person who files the material with the Commission.

Q You say the preparer. The people who make the statement?

A Yes.

MR. VELIE: Your Honor, at this time I ask the Court to take judicial notice of Section 26 of the 1934 Act which is Title 15 United States Code,Section 78(2).

I would like to read a portion of it to the jury, your Honor.

MR. MARTIN: Can we see it?

MR. VELIE: Of course.

(Pause.)

THE COURT: Gentlemen, are you aware now of what he is going to read?

MR. MARTIN: I am, your Honor. I don't think it is particularly relevant.

I have no objection.

MR. STILLMAN: I do.

THE COURT: Sir?

MR. STILLMAN: I object to it, your Honor.

THE COURT: May I ask Mr.Velie, you know I am going to charge the jury. Why do we have to get into this?

MR. VELIE: I will be happy to explain. We are required to prove that the proxy statement is required to be filed.

THE COURT: I don't think that there is any dispute over that.

MR. VELIE: I believe that you might find that counsel dispute me on that.

THE COURT: Is there any dispute, gentlemen, on this simple issue?

MR. MARTIN: Yes, your Honor.

THE COURT: There is?

MR. MARTIN: Yes, your Honor.

MR. STILLMAN: The witness --

THE COURT: Mr.Stillman, I didn't ask for argument, I just wanted to know -- you dispute it, fine. Go ahead, Mr. Velie.

MR. VELIE: Section 26, "Unlawful representations."

"No action or failure to act by the Commission -- that's the Securities and Exchange Commission -- "In the administration of this title shall be construed to mean that the particular authority has in any way passed upon the merits of or given approval to any security or any transaction or transactions therein, nor shall such, or failure to act with regard to any statement or report filed with or examined by such authority pursuant to this title or rules and regulations thereunder be deemed a finding by such authority for that such statement or report is true and accurate on its face or that it is not false or misleading.

"It shall be unlawful to make or cause to be made to any prospective purchaser or seller of a security, any representation that any such action or failure to act by the Securities and Exchange Commission is to be construed in that fashion."

MR. STILLMAN: Your Honor, I respectfully move for a mistrial on the ground that that document did not prove the fact that he indicated to your Honor that he wanted to prove.

THE COURT: I must say I would quite agree, but I don't think or I hope Mr. Velie doesn't think this is going

to prove just what you said. I would quite agree with you on that. All that's happened here, gentlemen, is that he wishes to bring this to the attention of the jury as a statute of which this court is amply prepared to take judicial notice of. That is all.

Let us march on to something else.

MR. VELIE: Very well.

THE COURT: Do you have any further questions of Mr. Heneghan?

MR. VELIE: I do.

THE COURT: All right.

Q Are there requirements, Mr. Heneghan, as to what companies must file documents and as to what documents must be filed?

A Well, I think you would have to indicate to me what areas you are talking about. There are many requirements.

Q Are they found in the statutes and in the rules?

A Yes.

Q All right.

MR. VELIE: Your Honor, I now ask you to take judicial notice of section 12 G 1 of the 1934 Act which is title 15 United States Code, Section 78 (L), subject G-1, your Honor.

MR. MARTIN: May I see that, Mr. Velie?

(Pause.)

MR. MARTIN: My objection is he's going to read a provision dealing with registration statements and we are dealing with proxy.

MR. VELIE: Your Honor, I'm going to prove that this is a registered company and following that as a registered company was required to file its proxy. I must do one step at a time.

THE COURT: May I suggest, Mr. Velie, that an awful lot of confusion could be avoided here if -- what does Mr. Heneghan have to do with all this? If you want this Court to take judicial notice of a statute, this is simple. I don't need the help, with all due respect, of this gentleman. I would like to know, what do we need him for? Let's do it and get it over with. Statutes we can handle without witnesses.

MR. VELIE: Very well, your Honor. I believe he can identify from the file the filing which was filed --

THE COURT: Fine, but that's not these statutes. All we are doing is whiffling here, if I may say so, with no need to keep this gentleman sitting here. He's a public servant. I'm sure he can be back in his office with many other things to do than just sit here listening to you reading the statutes.

MR. VELIE: If I may proceed.

It won't make any sense at all unless we do it in order.

THE COURT: We will take a recess. You show these lawyers at the back table what you are intending to do, so we don't have these pregnant intervals of silence, which they are entitled to in order to read this material.

MR. VELIE: Very well.

THE COURT: Mr. Light and ladies and gentlemen, we will take a recess at this point.

(Recess.)

(In open court, jury present.)

MR. VELIE: Your Honor, in accordance with your suggestion, I believe I can proceed with the statutes and without the witness.

THE COURT: You now decide you don't need Mr.--

MR. VELIE: I will read the statutes.

THE COURT: Gentlemen: Do you have any questions?

MR. STILLMAN: Just a few, your Honor, based on the testimony elicited thus far.

MR. VELIE: Allow me to do this.

THE COURT: All right. Since they wish to question Mr. Heneghan, and theoretically entitled to if they want, why, we will go ahead.

MR. VELIE: Your Honor, ladies and gentlemen, the parties have stipulated, however, the National Student Marketing Corporation was a registered company during all material times herein.

Your Honor, I now ask you to take judicial notice of Section 14 (A) of the 1934 Act, 15 United States Code, Section 78NA.

"It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a National Securities Exchange or otherwise, in contravention of such rules and regulations

as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or permit the use of his name to solicit any proxy or consent or authorization in respect of any security registered pursuant to Section 12 of this title."

Your Honor, I now ask you to take judicial notice of Title 17, code of Federal Regulations, Section 240.14(A) 6, portions of which I now ask permission to read to the jury.

THE COURT: Yes, I will take judicial notice of that regulation.

MR. VELIE: "Material required to be filed.

"Five preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders concurrently therewith shall be filed with the Commission at least ten days prior to the date definitive copies of such material are first sent or given to security holders."

I now read from subsection (c).

"Eight definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders."

Your Honor, I offer Exhibit 20 as a certified copy of the preliminary proxy statement filed by National Student Marketing Corporation on August 20, 1969.

I now read from the attestation.

MR. STILLMAN: I have no objection.

MR. MARTIN: I have no objection to the copy.

THE COURT: You don't have to read the certification, Mr. Velie. That is a redundancy which we can be spared.

I take it there is no objection to the so-called preliminary file copy?

MR. MARTIN: That's correct.

xx (Government's Exhibit 20 received in evidence.)

BY MR. VELIE:

Q Mr. Heneghan, do you recognize the received stamp of the United States Securities and Exchange Commission Division of Corporation Finance?

A Yes.

Q It shows that this preliminary proxy statement was indeed received for filing on August 20, 1969, is that correct?

A Yes.

Q I put before you, Mr. Heneghan, from Exhibit 25 in evidence the certified copy of the financial proxy statement,

the definitive proxy statement.

Do you recognize the received stamp of the United States Securities and Exchange Commission?

A Yes.

Q It indicates, does it not, that this was received for filing on September 30, 1969, is that correct?

A Yes.

MR. VELIE: Gentlemen, you may inquire.

THE COURT: Mr. Stillman.

MR. STILLMAN: Just a few questions, your Honor.

xx CROSS EXAMINATION

BY MR. STILLMAN:

Q Mr. Heneghan, Mr. Velie asked you about that portion of the proxy requirements which speak about the filing of preliminary copies.

Will you tell the jury the purpose of the preliminary filing of proxy material?

A The purpose is that the staff of the division have an opportunity to examine the information furnished in the proxy material to determine whether proper disclosure has been made on the facts presented.

Q On the staff are there any accountants?

A Yes.

Q Is it fair to say that the people who would be

reviewing the financial statement aspects of the filing are in fact accountants?

A yes.

Q Did you know back in 1969 a Mr. Burhenne?

A I knew he was an accountant on the staff.

Q There was a Mr. Lloyd Dollett and he was a branch chief.

A Yes. He wasnot an accountant.

Q But Mr. Burhenne was?

A Yes.

Q Is it fair to say, sir, that what happens is, when this preliminary material is filed, after the staff accountants review the material they send out so-called letters of comment raising questions about things that concern them?

A Yes, that's correct.

Q Is it also true that in some instances before the actual preliminary filing there is an interchange in some instances between the registrant or his accountant and the staff?

A There can be.

Q Do you know whether or not that was in fact true with respect to the proxy material for National Student Marketing Corporation?

A No, I do not.

Q You do not know that. All right.

The filing of a proxy document or proxy material is different from so-called periodic filings, is that right, sir?

A Yes.

Q By periodic filings am I correct in referring to forms known as 8K, which is a monthly filing?

A Well, yes, and other K forms.

Q Those K forms are documents which a registered company must file from time to time if certain contingencies occur, is that right?

A That's correct.

Q With respect to proxy material, if a corporation does not wish to solicit any vote from its shareholders I gather that there is no requirement that you file proxy material, is that correct?

MR. STILLMAN: Thank you. I have nothing further, your Honor.

MR. MARTIN: One question.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Heneghan?

A Yes.

Q Do the regulations for filing proxy statements provide that it may be a faulse and misleading statement to set forth misleading information or material which directly or indirectly impugns character, integrity or personal reputation or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations without factual foundation?

A I don't think there is anything in the proxy regulation that I know of. I would have to see. I can't say.

Q I show you that --

A Well, this -- what part are you reading?

Q The note here.

A These are -- well, yes, it does have that.

Q It does?

A Yes. You are reading from it. It has it, yes.

MR. MARTIN: Thank you very much.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr. Heneghan, I believe you said that the division of corporation finance checks the format to see if on the facts in the statements you get those facts are disclosed fully, is that the idea?

A Yes.

Q You can't tell, can you, whether important facts have been left out and not even shown to the Commission, is that true to say? In other words, if there is financial information which the company chooses not to tell, writeoffs or the like --

A There is no way that we would know.

MR. VELIE: Thank you.

THE COURT: Thank you, Mr. Heheghan. You may be excused, sir.

THE WITNESS: Thank you.

(Witness excused.)

MR. VELIE: Your Honor, with apologies, may I approach the side bar for a moment. This has to do with a matter we have been taking care of out of the presence of the jury.

THE COURT: Come up.

(At the side bar.)

THE COURT: I am sorry. I am not at all privy --

MR. VELIE: I am sorry. I didn't want to say this in front of the jury in deference to the objections that have been made.

We have an additional witness who can identify the fact that the Eastern commitment was written off. His name is Robert Ball. He is in the building. Jed Rakoff has spoken to him, has some documents, and perhaps it would be appropriate, if you wished, to have a voir dire or to put him on.

THE COURT: I have a sense that we are running out of witnesses. Does the Government have any other evidence besides this?

MR. VELIE: Available today Ihave Mr. Dingwall and some summary charts.

MR.MARTIN: Which again will require something outside the presence of the jury, your Honor.

THE COURT: And that's it?

MR. VELIE: I believe so, yes, your Honor.

MR. STILLMAN: Do I understand that Mr. Ritzenthaler will not be called? Because he is here.

MR. VELIE: He is here and as of now I don't see any point in pttting him before the jury.

MR. STILLMAN: The same is true as to Mr.

jhb-4

Jeffers?

MR. VELIE: Yes. You may call him if you wish.

THE COURT: Who is Mr. Ball?

MR. VELIE: Mr. Ball was the contracts accountant, as I understand it, at National Student Marketing Corporation, and as I understand what he can prove -- I have been sent a note -- as the contract officer he received the Eastern Airlines proposal some time during the summer, I understand, of 1969, had never heard of the verbal commitment previous to that. He made a schedule showing no billing --

MR. STILLMAN: Mr. Velie, can you keep your voice down, please?

MR. VELIE: Yes. He made a showing showing a schedule which reveals that as of January 20, 1970, Eastern Airlines had not been billed on the books of the company for any of the proposals herein.

He, as I understand it, as contracts officer, knows of no expenses incurred or projects performed by National Student Marketing for Eastern and I understand that he has some recollection of the fact that a large portion of the commitment was written off because the company phased out its ability to do the work for Eastern or any other company.

THE COURT: This doesn't sound like anything more than we already know. When we go beyond the proxy date it sounds like the same old stuff, that it was due to the fact that the company in 1970 realized it wasn't doing anything and that was the end of it.

How this can all be chargeable to knowledge on the part of Natelli, I don't understand.

MR. VELIE: The answer to that is that in August Mr. Natelli declared to the world that $519,000 was earnings of the May period and yet we have proof that the contracts officer never did anything for Eastern, had no record of - that is what we want to prove here -- and that he ultimately, as things progressed, simply caused it to be written off. In other words, Mr.Natelli should indeed have known that he had no business calling this earnings in August.

THE COURT: You better get this fellow. Where is he?

MR.VELIE: I thought he was in the witness room and Mr.Rakoff was preparing him, but I will have to check, if I may.

THE COURT: So now the jury comes in and wastes its day while we sit around here doing this.

MR. VELIE: I would have been happy to have proved it to the jury, your Honor. I have no other way

jhb-6

of doing it. You have ruled on the defense request for a voir dire. I have him here.

THE COURT: I would want one even if they didn't.

MR. VELIE: Very well. I don't object to your ruling.

THE COURT: You see, we bring him in here this morning and I don't see any purpose in doing anything but sending him home.

MR.VELIE: The voir dire should not take terribly long and if you deem the evidence admissible they could hear it and go home for the weekend.

THE COURT: Now they are fighting about poor Mr. Dingwall, they want to have that voir dire.

MR. VELIE: I don't understand that. Mr. Dingwall is simply a summary witness.

MR. MARTIN: Your Honor, I think it is a matter of the charts that are being produced. You cannot put them before the jury as a paper exhibit. The Court has to take a look at them and see what they say.

THE COURT: I suppose you are right. Could I have some assurance that we have Mr. Ball around here?

MR. VELIE: I will send for him right now. I asked at the break that he be brought to the witness room.

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(In open court.)

THE COURT: Mr. Light and ladies and gentlemen, we have a technical problem which I at least did not anticipate. Rather than hold you up any further, I am going to ask you to take another recess at this point.

If it takes longer than I think it will, I will either ask you to come back or I would send in word via Mr. Bowes or somehow. So if you will take another recess at this point.

(Jury absent.)

MR. VELIE: May I be excused, your Honor? I am going to try to locate the witness. I hope he is in the witness room. I sent for him before.

(Pause.)

MR. MARTIN: By the way, is there any 3500 material on this witness, Mr. Velie?

MR. VELIE: That is a good question.

MR. MARTIN: I kn ow we haven't gotten any.

THE COURT: Gentlemen, while we are waiting here, I want to be able to give this jury some indication of our time scheme. Now the Government should be finishing up Monday morning from what I hear.

MR. VELIE: I think so, your Honor.

THE COURT: Are we going to have defense wit-

nesses and, if so, are we going to fill out the week? For example, the jury has already asked whether we will be sitting a week fromthis Friday. My answer for that is going to be that if we are going that long, that we will not be sitting next Friday because I have other things to do.

As matters now stand, assuming the Government rests some time on Monday morning or thereabouts,will we fill out the rest of the week as best you can guess?

MR. MARTIN: My best guess, your Honor, is that we should probably go with the defense case at least three to four days in testimony. We will not get past the testimony by the end of next week.

THE COURT: That is very helpful. Thank you. Where is the witness, Mr.Velie?

MR. VELIE: I am told they are immediately on their way.

THE COURT: From where?

MR. VELIE: Third floor.

THE COURT: Third floor?

MR. VELIE: Yes. Here they are, your Honor. Mr.Ball.

R O B E R T B A L L, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

BY MR. RAKOFF:

Q Mr.Ball, were you previously an employee of National Student Marketing?

A Yes, I was.

Q When were you first employed by National Student Marketing?

A November of 1968.

Q What was your position then?

A Internal auditor.

Q Did there come a time when you changed to a different position?

A Yes, early 1969.

Q What was that position?

A Revenue accountant.

Q How long did you hold that position?

A Until May of 1970.

Q What are the duties of a revenue accountant? What were your duties?

A I was responsible for maintaining the records of the contracts that had been booked by the company and --

THE COURT: Will you please talk to the back of the room, Mr.Ball. The acoustics here are not ideal.

A I was responsible for maintaining the records of the contracts that had been booked and for billing those contracts.

Q Am I correct in stating that that included fixed fee contracts?

A Yes,it did.

Q Would that have included so-called Eastern contract?

A Yes.

Q Did your booking duties and billing duties include the booking of all expenses that would have been incurred in relation to the fixed fee contracts?

A Yes,it did.

Q And the billing of all bills that were sent out in relation of fixed fee contracts?

A That is correct.

Q Incidentally, who was your superior?

A Donald Freiert, the accounting manager.

THE COURT: I am sorry, sir. I am four feet from you and I couldn't hear that myself. What is that again?

THE WITNESS: Donald Freiert.

Q Were the two of you responsible to someone?

A To Bernard Kurek.

Q Mr.Ball, I show you Government Exhibit 18 already in evidence, which has been identified as the letter written from Mr. Mullen of Eastern to Mr. Bushnell on August 14, 1969, purporting to confirm an $820,000 commitment for fiscal 1970.

Sir, have you seen that letter before?

A Yes, I have.

Q When was the first time that you saw that letter?

A It was during or after August of '69.

Q When you say "after," you mean still within a month or two of that?

A That is correct.

Q When you first saw that letter, was it in conjunction with some other materials?

A Yes, it was in conjunction with the Eastern Airlines program package.

Q I direct your attention to defendant Exhibit J, the second half of that --

THE COURT: Is this Natelli J?

MR. MARTIN: Yes, your Honor.

Q -- and I ask you, is that the proposal you were just referring to that you received in conjunction --

MR. STILLMAN: Can't hear you.

Q Was that the proposal that you received in conjunction with the letter from Mr. Mullen dated August 14?

A Yes, sir,it was.

Q Was that the first time you had ever seen that proposal?

A As best I recall, that was the first time.

Q Had you ever --

THE COURT: Excuse me. What you mean was that the first time? I don't follow this? When?

MR. RAKOFF: He has testified --

THE COURT: I know what he has testified. That is why I am asking the question. When?

Q Mr.Ball, can you answer, please?

THE WITNESS: During August of 1969.

THE COURT: You saw this at the time you saw that other exhibit known as GX18?

THE WITNESS: Yes, sir.

THE COURT: Thank you. I understand.

Q Had youever heard of any commitment of this size fromEastern prior to receiving that letter, that proposal?

A I have no recollection of hearing of it before.

Q Your best recollection is that you had not heard anything of it?

A That is correct.

Q Let me draw your attention, Mr.Ball, to January of 1970.

Did you have occasion in January to determine what part of the Eastern contract had actually been billed?

A Yes, I had.

Q Did you prepare a schedule reflecting that?

A Yes.

Q How did you go about getting the data for that schedule?

A By a review of the books that were kept on the contracts.

MR. STILLMAN: I am straining. I am sorry.

THE COURT: We will read that back.

MR. MARTIN: Would you have any objection, your Honor, if we sat in the jury box during the voir dire?

THE COURT: That is fine. Anyhow, Mr.Ball, don't be bashful. Talk out.

(Question and answer read.)

MR.RAKOFF: Could you mark this as Government Exhibit 61 for identification, please.

xxx

(Government Exhibit 61 marked for identification.)

Q Mr.Ball, I show you what has been marked as Government Exhibit 61 for identification, and I ask you whether that is a copy of the schedule you prepared?

A Yes, it is.

Q Did you have occasion to look at that schedule this morning?

A Yes, I did.

Q Has that refreshed your memory as to the amount of the Eastern contract that you determined had, in fact, been billed as of January?

A Yes, it has.

Q Could you tell the Court what that was?

A Zero. There was no billing on it as of that date.

Q Am I correct in stating that this schedule also reflects certain prior Eastern commitments that had, in fact, been billed?

A That is correct.

Q Am I correct in stating that the total of those prior billings going back to 1968 is considerably less than $100,000?

A Yes,that's right.

MR. STILLMAN: Can I see the schedule?

MR. RAKOFF: Yes.

(Pause.)

Q Independently of any schedule, Mr.Ball, is it your present recollection that any billing had been done on this commitment?

A I don't recall any billing on it, no.

Q Had any expenses been incurred,to the best of your recollection, onthat commitment?

A I can't recall any expenses of any size, no.

Q Did you have knowledge of any performance that had been done on that commitment?

A No, I did not.

Q Do you know what finally happened to that Eastern contract?

A I know that it was eventually either substantiall reduced on the books or written off completely. I don't know which.

MR. RAKOFF: That is all, your Honor.

d 5A

THE COURT: Does the defense object to this?

MR. MARTIN: Yes, your Honor.

MR. STILLMAN: Yes, your Honor.

MR. MARTIN: May I ask a couple of questions?

THE COURT: We are not here to cross examine.

MR. MARTIN: I know that.

xx VOIR DIRE EXAMINATION

BY MR. MARTIN:

Q Mr. Ball, I show you J and that is the plan that you were referring to?

A Yes, sir, it is.

Q You were simply, for want of a better word, the bookkeeper in the accounting office who made the entries in the books?

A That's correct.

Q You had no responsibility for dealing with the client or in implementing the programs, is that correct?

A That's correct.

Q This was a plan, was it not, sir, that was to be implemented for the year 1970, is that correct?

A That's correct.

MR. RAKOFF: Could we have a clarification on that, your Honor? It is fiscal 1970, I believe.

THE COURT: I would assume that's correct. I don't

think anybody doubts it.

MR. RAKOFF: As opposed to calendar year.

THE COURT: By that time my understand is the corporation was on a fiscal calendar year.

MR. RAKOFF: Well, your Honor, at the time that the August 14 letter was written they were not.

THE COURT: All right. That's probably so. If this is of major importance here, I would be astonished.

Is there anything else that need be gone into.

MR. MARTIN: One further thing, your Honor.

Q Do you recall, Mr. Ball, participating in a conference call between Mr. O'Connor of Peat, Marwick, Mitchell, Mr. Bushnell, Mr. Kurek, yourself and Mr. Davies on February 18, 1970 together with Mr. Garriock and Mr. Cobb?

A No, sir, I don't recall the meeting.

Q Do you recall any conversation with Mr. Garriock and others concerning this contract where it was stated that NSM was not going to be able to fulfill this contract because they were doing away with the campus representative system?

A I don't recall any specific meetings where that was discussed. I know it was discussed over a period of time.

Q Would you just read this document.

MR. MARTIN: And this is the Wharton work paper,

your Honor, that we have referred to.

Q -- starting with the third paragraph. Does that refresh your recollection at all as to that, Mr. Ball?

A No, I'm sorry, it doesn't. I have seen this. I just don't recall the meeting.

Q Without saying reference to any particular meeting, do you recall being told by officers of National Student Marketing that the purpose, the reason that this Eastern contract was going to have to be written off was because National Student Marketing Corporation could not fulfill it because they were terminating their campus representative system?

A I recall some discussions of that, yes.

MR. MARTIN: Fine, your Honor. That's all I have.

THE COURT: I take it that both defendants object to any portion of this profferred testimony.

MR. MARTIN: Yes, your Honor.

THE COURT: Mr. Velie, I will permit if you and Mr. Rakoff desire the testimony, which Mr. Ball has given as to what he learned in August of 1969. As to anything after that or, more precisely, anything after the date of the filing of the proxy, I will not permit.

Again, I do not see any clear nucleus between this and the issue of Mr. Natelli's knowledge or criminal intent.

It is just to open. None of the witnesses for perfectly good reasons have been able to tell to my satisfaction anything that I can assume a reasonable person would have anticipated that Mr. Natelli either knew or should have known. This just went on too long, at a time when there's no showing that he was around, in any event, directly concerned and, second of all, even if he had been, that he was involved in all of this.

MR. VELIE: Your Honor. --

THE COURT: So I want to know, do you want to offer the brief testimony of what he learned in August?

MR. VELIE: I believe we do, your Honor. If I might try to explain why I think --

THE COURT: It is really the same as it is always been, no offense to you or Mr. Ball or anybody else. We don't know anything more than we did before from the other witnesses.

MR. VELIE: I do think we know this, that in January of 1970 the books of the company show absolutely no activity whatever.

THE COURT: I could have guessed that already. In fact, there's already evidence I think of a documentary nature that tends to indicate that.

MR. VELIE: Not before the jury, however.

THE COURT: I'm not worried about the jury. I'm worried about this issue. Forget the jury for the moment. They are not here.

MR. VELIE: Now, the point that I think we are entitled to argue circumstantially to this jury from this evidence, and that's why I believe it is relevant circumstantial evidence is this: When Mr. Natelli declared $500,000 to be earnings as of May, he knew that the campus marketing system had generated $3 millon of so called sales, 2 million of which he had separated.

THE COURT: Mr. Velie, one of your techniques is to argue your whole case, which is already in evidence and bootstrap this point.

I'm not going to be persuaded by that. I told you that three or four times already. You are only arguing yourself out of court on this for one good reason, all of that is in evidence. You can make that argument. One of the things that concerns me is just that point. You can make the argument now.

To put in an additional proof of what happened in 1970 I think is very unfair to the defendant Natelli.

MR. RAKOFF: Your Honor, could I make one point?

MR. STILLMAN: I can't hear you, Mr. Rakoff.

MR. RAKOFF: I would like to make one point. I

may be treading on ground -- I haven't been ~~hear~~ here the whole time this has been discussed --

THE COURT: We will forgive you.

MR. RAKOFF: Thank you, your Honor. This schedule that was prepared, admittedly prepared in January, nevertheless is a reflection of events going back to '68.

THE COURT: I know, that's quite clear.

MR. RAKOFF: And what it shows is that Eastern hadn't been doing any business of this --

THE COURT: I am aware that Eastern is a real soggy bag of nothing, as it turns out. We are all aware of that. But to put a witness on who can say that finally in 1970 this company wrote it off presumably because there hadn't been any activity and because their campus marketing division was a bust and to jump from all of that proof, which I don't criticize or assail as being untruthful or inaccurate, and to suddenly make a bootstrap argument that Natelli knew all of this and should have known all of this to me is very unfair.

I'm perfectly agreeable that the Government can make the argument that as of the early morning hours of August 14, knowing everything else, he should have known at that time to accept Eastern as a bonafide receivable was a lot of nonsense. Fine, you can argue that now on evidence

already in the case, and more power to you. But to add to this bootstrap kind of a theory which goes into the future and vaguely depends on events which I just don't think -- maybe if it were Bernard Kurek or somebody like that, who was there every day, it would be a different problem. To do this to an outside account, I think is a little unfair.

So I'm not going to hear anymore of this. I don't want any more proferred witnesses on the point. The witnesses have all been consistent and truthful, I assume.

MR. VELIE: We will drop the part about the write off. Allow me to speak to something different.

Mr. Rakoff has pointed out that a summary of early records can be put in.

THE COURT: I heard that. I don't want a summary prepared in 1970, unless the defense is willing to consent to its admission.

MR. MARTIN: We are not, your Honor.

MR. RAKOFF: Can we put in, your Honor, his recollection of what in August he had billed?

THE COURT: I said he can tell us what he knew in August and what he did. But that's it. Now, do you want to do it or not?

MR. VELIE: Yes, your Honor, we do.

MR. MARTIN: Your Honor, may I just raise an objection, not to the fact that that may be admissible. We had an understanding that we would get 3500 material in advance. I heard about Mr. Ball for the first time this morning. I have a file in my office on Mr. Ball. There are obviously some questions, if he is going to testify, I would like to ask him. I had no idea he was coming today. Otherwise I would have been prepared. I am sorry, Judge. I talked to Mr. Velie last night.

THE COURT: I am sorry too, but if you are asking

me to be an insurer for this, forget it, I won't be. The system doesn't require that. It may shortly, but not now.

What youare saying is you want to put this over until Monday.

MR. MARTIN: Yes, your Honor, so I can at least have my file on this man.

THE COURT: I can't quarrel with you on that. But 3500 material --

MR. MARTIN: I don't care about that, your Honor. I just want the time.

THE COURT: I may care about it because I want to find out about it.

Is there any information, Messrs Velie and Rakoff, that you have that you should turn over to Messrs. Martin and Stillman under the statute or for any other reason?

MR. VELIE: Yes, your Honor. I should point out that I realized only at this morning's session --

THE COURT: I know. That is why I was a little peaked. I understand that.

MR. VELIE: We have some material and I will turn it over. I believe it is fairly brief.

Much of it, I point out, gentlemen, has previously been turned over under our discovery arrangements, wholly apart from 3500 arrangements.

THE COURT: Gentlemen, it is a quarter past 12. I propose to call this jury in and excuse them. I am sorry in a way we even brought them in. If I had ever known what I now know I wouldn't have, because we really haven't used their services very much at all.

Then I propose to get these charts out in the open so that we can voir dire them. I don't expect to take any time with a lot of dilations about various minor matters. I am only interested in getting the charts out, which I assume Mr. Dingwalllis being called for.

MR. VELIE: Yes, your Honor, exactly.

THE COURT: Mr. Ball, I don't know where you life and work, sir.

THE WITNESS: Washington, D.C.

THE COURT: I am afraid we will have to ask you to fly up on the shuttle Monday morning. Hopefully we will get you out and gone.

THE WITNESS: Okay.

MR. VELIE: Thank you, your Honor.

THE COURT: Thank you, sir. You may be excused until Monday morning at 10 o'clock.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Bring the jury in.

(Jury present.)

THE COURT: Mr. Light and ladies and gentlemen, I asked you to come back. We have disposed of the legal problem that I told you about before you left. It now turns out, however, that there is another one which is going to require the time of the Court and counsel. So rather than hold you up any longer I am going to ask you to go home or go about your business until Monday morning.

In the meantime I have endeavored to find out and I think I have some information which I would like to impart to you about the time frame for the future.

The Government is about to conclude its case. I believe they will only have two witnesses, one of whom I know will be very brief indeed. In fact, there is an excellent chance the Government will finish its case on Monday morning.

Let us say at the very least sometime Monday in the middle of the day. I believe from what I am told there will be some defense evidence and that that will consume two, three, maybe four days.

So it would look as though we are going to consume most of next week.

If we come to Friday next week, if we are not done by that time, I must advise you as matters now stand, that I have other cases long ago scheduled on that day.

On the other hands, I am going to review the situation withcounsel in those cases over the next couple of days and if there is any change on that I will let you know Monday. But at the moment I wish you would anticipate that we will not be sitting next Friday. I will try to take it up with you again Monday.

This at least will give you some idea of how we are doing. All right? Have a pleasant weekend on this summery November 1st.

(Jury left the courtroom.)

MR. VELIE: Your Honor, would you like us to run through testimony or simply display the charts.

THE COURT: Let me ask learned defense counsel. What do you want to do, gentlemen?

MR. MARTIN: Judge, I think we can just look at the charts. There is no real dispute about the facts that go into them.

THE COURT: Let's have a presentation on the record of the charts the Government wishes to offer.

MR. VELIE: Your Honor, if you will bear with us, we have not premarked the charts. We will do that over the weekend.

THE COURT: Youcan mark them right now. That is the easiest thing in the world.

MR. VELIE: Rather than take up the time of the Court with physically marking them, they have numbers on them which I will refer to as the numbers of this hearing. Will that suffice?

THE COURT: All right.

MR. VELIE: Your Honor, chart number 2, which is now on the blackboard, propped up, illustrates and summarizes computations made by Mr. Dingwall as follows:

The black bar graph represents what Government Exhibit 5 in evidence shows to be the bottom line, consolidated net earnings for National Student Marketing for 1968. It includes unbilled accounts receivable.

THE COURT: You say that the annual report says that?

MR. VELIE: Yes, your Honor.

THE COURT: What page are we talking about. Are we looking to the consolidated balance sheet or to the earnings.

MR. VELIE: The earnings statement, your Honor, page 18. If you find the bottom line, it is $388,000.

THE COURT: There are bottom lines and bottom lines. I would advise that you not use that cliche. I know the line you mean. Net earnings.

MR. VELIE: Net earnings, 388,031. That is

exactly what is shown there. It of course includes, as Mr. Dingwall would be able to testify from his examination of Government's Exhibits 3 and 4C, $1.7 million or thereabouts of unbilled accounts receivable.

Mr. Dingwall performed a computation removing the unbilled accounts receivable, correcting for tax, using figures from Exhibits 4C and 3 as well as 5.

It shows that without unbilled accounts receivables and after tax National Student Marketing had a loss of the figure shown, $65,000, without unbilled accounts receivable.

MR. STILLMAN: Is there a scale? May I inquire what the scale is?

MR. VELIE: Your Honor, that is a good question. The chart has been prepared to scale. In other words, the $65,000 occupies the proportionate number of inches comparable to the $388,000.

MR. STILLMAN: You mean like one inch equals X thousand dollars, something like that?

MR. VELIE: Mr. Dingwall, can you tell us the scale you used?

MR. DINGWALL: I can't say the scale that was ultimately used. I had a scale. It was blown up four or five times that. Exactly what one inch equals I couldn't say. I will say generally speaking this portion here is

roughly 20 per cent or soof that.

MR. VELIE: As the numerical figures indicate it should be.

MR. MARTIN: Your Honor, I think it might be helpful -- I think thereis going to be another chart -- if we could look at them together.

MR. VELIE: Your Honor, Mr. Martin has inquired about our chart number 4. Our chart number 4 is internally to scale but is obviously to a different scale from the first one, and they are not intended to be compared with each other. Each one is self-contained. Chart number 4 deals with a different line in Government's Exhibit 5, the annual report. It deals with the number before taxes and extraordinary items, $699,000, and Mr. Dingwall has performed a calculation taking out the gross profit on the unbilled accounts receivables booked as of that date as shown in Government's Exhibit 3 and 4C and come up with what it would have been before taxes, which is $26,000 of gain.

In other words, your Honor, in laymen's terms, this is a before tax chart, this is an after tax chart.

THE COURT: Mr. Dingwall, take a look at Chart No. 2. What is that big red rectangle down at the bottom of the line?

MR.DINGWALL: You are referring to --

THE COURT: No, no. On Chart No. 2.

MR. DINGWALL: I am sorry.

THE COURT: You see that big rectangle?

MR. DINGWALL: Yes. This refers to the loss that would have resulted had no unbilled accounts receivable been reported.

THE COURT: What is the red arrow or rectangle onthe vertical to the left of it?

MR. DINGWALL: The purpose of the arrow is to show -- well, this line here indicates profitabilitty and loss.

THE COURT: Yes, I understand, and red represents red ink and blue represents blue ink.

MR. VELIE: Exactly.

THE COURT: But I am still puzzled about the difference between the red rectangle and the vertical or arrow-shaped rectangle.

MR. VELIE: The arrow shapes simply indicate for people who may or may not know about in the black or in the red that this direction is in the profit direction

and this direction is in the loss.

THE COURT: I see.

MR. VELIE: The same here.

THE COURT: All right. Any other charts?

MR. VELIE: Yes, sir.

MR. STILLMAN: Your Honor, you want to hear us as you go along or do youwant to go through the charts.

THE COURT: No, I don't want to hear you as we go along. I want to see what these charts are. Then if you want to object you will object.

MR. VELIE: Your Honor, we have been referring to this asour chart No. 5. What it is is again a bar graph.

MR. MARTIN: Could I ask Mr.Velie if he has copies of these for us now that we can use?

MR. VELIE: Yes.

MR.MARTIN: I have some marked up ones. They have changed slightly since I originally got them.

MR. VELIE: The record should reflect that on October 1st all of these charts except for No. 15 were furnished to counsel. About a week later we changed some numbers and told them about it.

THE COURT: How many charts are there?

MR.VELIE:11 charts we aregoing to present,your Honor. This has been complicated.

THE COURT: This is going to make it so beyong per adventure, in my opinion. But that is your business, I guess.

MR. VELIE: Chart No. 5 is a paragraph representing the total amount of unbilled accounts receivable booked as of 1968 and it shows the status of those unbilled accounts receivable as of June 9, 1969, the date the evidence in this case shows a meeting was held between Mr. Natelli, Mr Randall and others.

This chart summarizes entries in Government Exhibit 3, which is the special sales work binder, Exhibit 13, which is the proxy binder, and 15, which was Mr. Kurek's schedule prepared for the June 9th meeting, and it shows that 55 per cent of the unbilled accounts receivable had been written off as of June 9, an additional 12 per cent was indicated by entries in Peat, Marwick's work papers, all of them in Mr. ~~Scnascarolli's~~ Scansaroli's hand, an additional 12 per cent was either no contract or to be written off.

The amount represented as billed summarizes entries on Exhibit 15, Mr. Kurek's chart as presented to Mr. Natelli on June 9. 13 per cent of these things had been billed in June of the following year, almost a year later.

What it says here as inactive is the residual

balance of unbilled accounts receivable which had neither been billed, written off nor commented upon. They had been sitting on thebooks since the August 31, 1968 year had closed and nothing had happened to them.

That is 20 per cent.

THE COURT: Let's go to the next one.

MR. VELIE: Chart No. 8 is simply side by side presentation of two corresponding pages. This is on the left-hand portion of the chart a page from Government Exhibit 5, an asset portion of the balance sheet. Highlighted was the accounts receivable number. The corresponding balance sheet in the 1968 balance sheet right here, again, the unbilled accounts receivable number.

As Mr. Martin has already pointed out in cross-examining one of my witnesses, the number is shown reduced by roughly three-quarters of a million dollars. There is no disclosure.

THE COURT: This is chart number?

MR. VELIE: 8.

THE COURT: All right. Next.

MR. VELIE: Chart No. 9, your Honor, is a side by side presentation of three corresponding pages from the proxy statements as they came historically. This is on the left the August 9th proxy --

THE COURT: This we already have in evidence to an extent.

MR. VELIE: Yes,your Honor, to some extent we do. This is a little bit different. This is the balance sheet notes rather than the earnings statements.

THE COURT: All right.

MR. VELIE:The balance sheet notes from the draft proxy of August 9, the balance sheet notes from Mr. Natelli's working draft, in which he crosses out an explanatory note, and the balance sheet notes from the final proxy, in which there is no disclosure of the write-offs.

Is there any further question about this one?

THE COURT: Next.

MR. VELIE: Yes, sir. Chart No. 10, your Honor, is already in evidence in miniature form as Government Exhibit 17B. You will recall that the Government gave copies to the jury.

THE COURT: Right. Say no more about that.

MR. VELIE: It is identical, only larger.

Y our Honor, the next chart is Chart No. 11 and it summarizes the following information: It includes on it a blowup of the sales portion of the footnote charged as false in the indictment.

This is the sale portion of that footnote charged in the indictment as false. It summarizes information found in various exhibits in evidence, that over $1 million of losses had been written off and not shown as having been written off, and that three-quarters of a million dollars of these had been subtracted instead of from National Student Marketing's line from other companies' lines.

THE COURT: That is No. 11?

MR. VELIE: Yes, your Honor.

THE COURT: All right.

MR. VELIE: Number 12 corresponds to the balance of the footnote challenged as false in the indictment. This is the earnings portion of that footnote blown up.

Next to it a description of matters found in other exhibits which are not disclosed here, a computation of the gross profit written off retroactively, approximately $210,000, the tax credit spoken about by Mr. Natelli in his grand jury testimony of $188,000, also disclosed in the proxy statement elsewhere, but not in this note, the net, $21,000, which was subtracted from the pooled companies' line instead of from National Student Marketing's line.

THE COURT: All right.

MR. VELIE: Chart No. 14 is again a bar graph, but instead of summarizing only the 1968 unbilled accounts receivable that summarizes 18 months worth of unbilled accounts receivable within the bar graph, the total being $3.3 million unbilled accounts receivable booked in an 18-month period, that is, all of 1968 plus half of 1969.

THE COURT: Up to February?

MR. VELIE: Yes,your Honor, up through February 28, 1969.

THE COURT: All right.

MR.VELIE: This particular chart summarizes the status of the 18 months work of unbilled accounts receivable as of August18,1969, which is the next business day following the events at Pandick Press. It shows, in other words, a summary of what has happened after the dust settles at Pandick Press. It shows that $2 million or thereabouts has been written off. These are all entries in Government Exhibit 13, the proxy binder.

Summarized and totaled there are $2 million of unbilled accounts receivable written off. This constitutes 61 per cent of all theunbilled accounts receivable to date.

In addition, the entries read to us seriatim by Mr. Oberlander and by Mr. Johnston are summarized here in

this next portion . These are the contracts noted as bad or to be written off in Mr. Oberlander's schedule and in Mr.SCansaroli's schedules, all of them found in Government Exhibit 13.

An additional 9 per cent is indicated as no good.

THE COURT: All right.

MR. VELIE: We have a number showing the amount inactive. The residual amount here is billed or billed in part, giving the benefit of the doubt to the defense.

THE COURT: All right.

MR. VELIE: Exhibit 13 shows the nine-month earnings as reported in the proxy statement.

We have taken the figure before tax and extraordinary items simply because the tax calculation made by NationalStudent Marketing turned out to be utterly in error. So we have taken it before tax number here, shown it with unbilled accounts receivable.

Mr. Dingwall has performed complicated calculations taking out the unbilled accounts receivable. The result is a modest loss, $16,000 for the nine-month period, without unbilled accounts receivable.

Your Honor, the final chart is the chart we have labeled No. 15, and this is a summary of entries in Government Exhibit 13, the proxy binder, and Government

Exhibit 34, which is Mr. Johnston's schedules or his analysis which led to the comfort letter.

If you will bear with me, your Honor, there are many entries summarized, but it is actually a great aid to understanding as follows: You will recall that through Mr.Oberlander's testimony and Mr.Johnston's testimony I elicited repeated references to these particular contracts.

THE COURT: I follow that.

MR. VELIE:This is the amount of each of those contracts. In this column is the May 1969 review which Exhibit 13 shows Mr.Scansaroli performed. It shows the date of each entry by Mr.Scansaroli with respect to one of these contracts. It says accountant, J.S., which is his initials in those pages. The comment that appears on Mr. Scansaroli's own page, delete, writeoff, no contract, or whatever, whatever appears on the page, is quoted here.

The August 1969 review you will recall from the evidence Mr. Oberlander performed and this summarizes his entries with respect to each of the contracts which are listed in the margin and the date at which he performed his review. Most of them are on August 15 or August 16, his initial, D.H.O., and some of the things that he said, bad, bad, bad, bad, duplicated, bad, and so on, his comments

quoted.

The last column simply indicates whether Mr. Johnston disclosed these things in the comfort letter that he prepared.

The start indicates that they are in, the dash indicates that they are out of the comfort letter.

In other words, we can see that a May review was performed by Mr.Scansaroli, an August review by Mr. Oberlander a comfort letter review by Mr. Johnston, which finally resulted in some disclosure of these matters.

d 6B

THE COURT: All right. Let me pick up. Mr. Martin asked if Mr. Dingwall or you have normal size sheets.

MR. VELIE: Yes,your Honor. We do. If you bear with us a second, we will give the Court one of eachof these and one of each for each defense counsel.

THE COURT: I am more concerned if you can give them to Messrs.Martin andStillman, and if you have one for me, I would be grateful, but I don't press it.

MR. VELIE: We would like you to have one.

THE COURT: Then I will ask you gentlemen,I will hear you on Monday as to whether you object to any or all of these.

MR. VELIE: Thank you,your Honor.

THE COURT: However, since you have had this material a great while, ifyou care to, I would like to know if there is any that you make no contest about.

MR. MARTIN: Your Honor, certainly as to the things that are no more than this type of document that takes three pages or two pages --

MR. VELIE: You are referring to Chart No. 8, are you?

MR. MARTIN: I don't have the number here, Mr. Velie.

THE COURT: 8 and 9 would be two examples of that,

comparison charts so-called.

MR. MARTIN: I don't have an objection to that, your Honor.

MR. STILLMAN: Excuse me. I am sorry. My problem,your Honor, is how do we use that for a summary witnes in the course of the trial? It seems to me that is a summation tool, unless I am mistaken, and perhaps Mr. Velie could enlighten me. That is my confusion as to the charts,which are merely blowups of exhibits in evidence.

THE COURT: I msut say Chart No. 10 to me would seem to be a redundancy. We already have it in the record as Government Exhibit 17B and use was made of it at the trial in the presence of thejury. So I would agree with you,for example,that No.10 doesn't seem to me to be necessary.

MR. VELIE: May I speak to that very briefly, your Honor?

Chart No. 10 contains in it simply pages that Mr. Dingwall has performed calculations showing what those numbers consist of and do not consist of, and can tell us what his calculations show.

THE COURT: Then I was totally misled. I thought you said, and I thought I read with my own eyes, thatChart No.10 is the same as Government Exhibit 17B.

MR. VELIE: That is true, but I have testimony regarding that from Mr. Dingwall.

THE COURT: I don't object to that. All I am saying is, I don't see why we have to duplicate things in evidence. There is already about 195 tons of paper in the record as it is. I am not commenting on any testimony you might want to bring forth with Mr. Dingwall.

MR. VELIE: Very well. I believe a blowup of 17B would be an aid to the jury.

THE COURT: I wouldn't mind if you wanted to use it in summation. I don't see why we put it in evidence as such.

MR. VELIE: Very well. If I may elicit testimony fromthe blowup without putting it in evidence, that would be fine.

THE COURT: I didn't say that.

MR.VELIE: I don't understand then, your Honor.

THE COURT: I think you do. I think you are too clever by halves.Let's not have any more vaporous comments like that. I used the word summation, which in my world and in yours does not mean during examination of a witness, and you know it. You are too clever by halves, my dear boy, this morning and I don't think you need to be.

Now, I gather from what has been said, Mr.Martin

and Mr.Stillman, you are really in no position to comment yet.

Let's leave it until Monday.

End 7A

MR. MARTIN: I would appreciate that, your Honor. We will check the calculations.

THE COURT: Fair enough.

MR. VELIE: It may be some assistance to us. One of the reasons of course we disclosed them earlier was to elicit comments from counsel of the kind that could be corrected, and indeed at Mr. Stillman's urging I have amended titles of many of the charts to meet his particular needs. If there's something we can change over the weekend, gentlemen, wouldyou please tell me now.

THE COURT: Wait a minute. I would think, however, you raise a reasonable point. I will ask defense counsel to call you or whoever you designate no later than 5 p.m. today. It is now a quarter to 1.

MR. VELIE: Thank you, your Honor.

THE COURT: I think you are entitled to that.

MR. MARTIN: I certainly agree with that. As to those matters, such as caption, that we can deal with. I have some question as to some of the numbers.

THE COURT: Whatever you have questions about, just bring them to the attention of the U. S. Attorney, if you will by 5 o'clock. That's all. If you have legal objections, obviously we are just going to have to thrash those out Monday morning.

MR. STILLMAN: May I ask for a modest amendment? I don't want to put any pressure on Mr. Velie. I think he knows I tried to cooperate with him on those charts. May I ask that the time to make my call to him be 10 o'clock tomorrow morning rather than 5 o'clock this afternoon?

THE COURT: I leave that up to Mr. Velie. If he wants to extend the time, I won't stand in his way.

MR. MARTIN: I would ask for that also since I have to go to West Street this afternoon.

MR. VELIE: My problem is Mr. Dingwall lives in Washington and will be leaving this afternoon. If there's anything you can tell me this afternoon, gentlemen, please do.

THE COURT: 5 o'clock. Good day.

MR. MARTIN: So we don't run into the problem we had today, can we know -- are Mr. Dingwall and Mr. Ball the only witnesses Mr.Velie has?

MR. VELIE: That's all I plan. If I have anything else, I will let you know.

MR. STILLMAN: May I take up one more matter? You may recall earlier today, your Honor, I asked for the opportunity to make a motion to strike the testimony of Arthur Frommer and also the testimony now of Louis Schauer.

THE COURT: Those motions are denied.

MR. STILLMAN: Thank you, your Honor.

(Adjourned to November 4, 1974 at 10 o'clock a.m.)

United States of America

vs. 74 Cr. 43

Anthony M. Natelli and
Joseph Scansaroli

New York, New York.
November 4, 1974 - 10:00 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: Gentlemen, once again we are falling into the habit of early morning applications. What is this one and by whom?

MR. MARTIN: Your Honor, I wanted to call to the Court's attention an article that appeared in this morning's Wall Street Journal. I gave it to the clerk. I don't know if you have had an opportunity to read it, your Honor.

THE COURT: I have it here. What is it you want to do about it?

MR. MARTIN: Simply at this point, your Honor, to call it to your Honor's attention. My view of the matter would be, since the article is still on the newsstand, to await any inquiry of the jury until tomorrow morning, when that paper will no longer be available.

THE COURT: Let me remind you that on several

occasions I have admonished the jury that we are trying to decide this case on the basis of evidence that comes out in the courtroom and nothing that they see or hear outside.

Not only that, I specifically instructed them at least twice that if they encounter anything not to read it.

Now, if we are going to make an issue out of this every time, I suggest to you that you keep that as background fact in mind. This is a public trial after all and no one has suggested that we should not conduct it as a public trial. I don't follow this.

MR.MARTIN: Your Honor, what disturbs me about that particular article is that it refers to matters which your Honor excluded in the sense that that is the main thrust of the article, those items that your Honor excluded from evidence.

That is what bothers me about that.

THE COURT: I make rulings. What do you want me to do, go down in the basement and make rulings? I don't understand you.

MR. MARTIN: Not at all, your Honor. I do think there are still matters -- we still have not heard a report back on the other incident.

THE COURT: A report back on the other incident?

I don't understand that. You specifically,and I think wisely, asked me not to take that up with the jury. So we are not waiting for any report from the jury on that.

MR. MARTIN: Your Honor, I thought I did say at that time I did not. I want to make my position clear on that. If there is evidence that that statement in the other article came from a Government source connected with this prosecution, then I think that the burden of establishing a right to relief is much less than if it is simply a matter that came up accidentally in the newspaper article.

It was for that reason that I said at the time I didn't, until I knew all the facts as to theGovernment's involvement in that statement. I think the record is clear that I did say at this time, although I may in the future as facts develop.

THE COURT: Again, what is confusing me, Mr. Martin, are several things. First of all, if you want me to stop this trial and conduct a searching investigation as a quasi prosecutor that is one thing.

If, on theother hand,you are concerned about this jury in this case, that is another thing. You constantly straddle these two points, it seems to me.

Are you suggesting that today's article is a leak from Government sources?

MR. MARTIN: No.

THE COURT: Then I confess to you once again I am befuddled by what you are seeking to have the Court do at this juncture.

MR. MARTIN: Let me try and see if I can make myself clear and take the two articles separately.

As to the first article, your Honor, that involved a Government source apparently. Your Honor said --

THE COURT: We have covered that one and I don't want to be told about that one again. I am well aware of it.

What I am concerned about is it is now 10:07. The jury is here. What is it you want me to do at this point? You have another article.

MR. MARTIN: At this point, nothing, your Honor.

THE COURT: All right. Fair enough.

MR. MARTIN: Tomorrow morning I might ask your Honor if you would consider asking about this article tomorrow when it is a time they will not be able to go out and pick up the paper.

THE COURT: I will leave until tomorrow morning tomorrow morning's events. I find that is usually better in these grave matters which seem to be ephemeral at times and not so ephemeral at other times.

Of course, you can raise it tomorrow morning.

At the moment we can agree on one thing. You don't want me to do anything now vis-a-vis the jury.

MR. MARTIN: That is correct.

THE COURT: Mr.Stillman, are you any part of this, you want to say anything?

MR. STILLMAN: Mr. Martin expresses my position.

THE COURT: Mr.Velie?

MR. VELIE: I would ask perhaps the Court might think it appropriate towards the end of the session or the day to give a general statement of the kind you have previously given just so that nobody inadvertently picks up the newspaper. I don't think they will go out and get it if you tell them not to. Perhaps that will save tomorrow's problems rather than creating them.

1A

THE COURT: All right. Thank you. We will bring the jury in.

MR. VELIE: Your Honor, one very brief housekeeping detail.

William Reed, an accountant from the SEC, is present at our table this morning. I present him to the Court.

You will recall that his name was -- I know his name was in the Government's introduction remarks requests for the jury. I frankly can't recall if you announced his name to the jury. If you feel that he should be announced to the jury --

THE COURT: What is Mr. William Reed's role here?

MR. VELIE: Mr. Reed is going to assist me while Mr. Dingwall is on the stand. It is only that. He is an accountant. His credibility should not be in any way in issue in this case.

THE COURT: He is not going to be a witness, in order words?

MR. VELIE: That's correct.

THE COURT: All right.

MR. STILLMAN: Your Honor, without meaning to add to any delay before the jury, I wonder whether you would consider it appropriate at this time, since they are not with

us, to hear any objections we have with respect to the charts, which I understand will be offered through the second witness the Government has this morning, or would you prefer that we wait until the first witness leaves the stand.

THE COURT: Experience has always taught me that it is good to get going.

MR. STILLMAN: All right, sir.

THE COURT: We will field whatever we field when it comes up.

(Jury present.)

THE COURT: Good morning, Mr. Light and ladies and gentlemen.

All right, Mr. Velie.

MR. VELIE: Your Honor, I believe we should swear the witness in the presence of the jury.

THE COURT: Yes, that's correct.

xx R O B E R T C. B A L L, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR VELIE:

Q Mr. Ball, how are you employed, sir?

A I am an accountant employed by Commercial Office furniture in Washington, D. C.

Q Mr. Ball, I should remind you to keep your voice up and to speak slowly in this room.

Voices do not carry well at all.

Were you previously an employee of National Student Marketing Corporation?

A Yes, I was.

Q During what periods?

A From November 1968 until May of 1970.

Q During that time did you have occasion to serve as a revenue accountant?

A Yes, I did.

Q What were your duties as a revenue accountant for National Student Marketing?

A To administer the contracts for marketing programs and to maintain the books and records on those contracts.

Q You maintained NSMC books and records with respect to contracts, is that correct?

A That's correct.

Q Does this include what we have been calling in this room fixed fee contracts on unbilled accounts receivables?

A Yes, it does.

Q Did those records break out the contracts by client and commitment separately?

A Yes.

Q Did those records indicate when National Student Marketing spent something on a client, did you find or did you enter something in your records if National Student Marketing spent something on a client?

A Yes, I would make an entry for each contract for the cost expended.

Q Would you make an entry each time National Student Marketing send a bill to a client?

A Yes.

Q Mr. Ball, did there come a time when you learned that Eastern Airlines had made a commitment for approximately $800,000 for National Student Marketing's services?

A Yes.

Q When did you first learn that?

A It was approximately August of '69.

Q How did you learn about this?

A I was given a program package for Eastern Airlines along with a commitment letter from Eastern.

Q I should you Government's Exhibit 18 in evidence and ask you if you can identify that for us?

A Yes. This is the commitment letter that was accompanying the program package I received.

Q That is, of course, the $800,000 Eastern commitment letter, is that correct?

A That's correct.

Q Government's Exhibit 18, 820,000, dated August 14, 1969.

I show you the portion of Natelli's Exhibit J. in evidence which is a Xerox identified as an Eastern Airlines program, starting at page 2267 and so on, and ask you if that is the package you were talking about?

A Yes, it is.

Q In the past several business days, Mr. Ball, have you had occasion to examine your old records from National Student Marketing Corporation?

A Yes.

Q Did you look to see if you could find in the period beginning with the beginning of 1968 and all the way up through October of 1969 -- did you look to see if you could find any record of National Student Marketing spending anything on that Eastern program?

A Yes, I did review that and there were no indications of any cost on the program.

Q According to your records, National Student Marketing did not spend anything to implement that program, is that correct?

A That's correct.

Q Did you examine your records to see if National Student Marketing ever sent Eastern Airlines a bill during that period regarding that program you have before you in Natelli's Exhibit J?

A Yes, I did. There were no records of billings.

Q Apart from your records, do you have a recollection of ever billing or expensing, I believe is the term, recording something that was spent recording something that was billed with respect to an Eastern Airlines contract?

A No, I have no recollection of that.

Q That is your best recollection, that you did not?

A That's correct.

MR. VELIE: Gentlemen, you may examine.

THE COURT: Before you begin, would you brook an interruption, Mr. Martin.

MR. MARTIN: Absolutely, your Honor.

(Pause.)

xx CROSS EXAMINATION

BY MR. MARTIN:

Q The document you were asked about certain records that you examined, is this document the document, a copy of the document you reviewed when the Eastern commitment was first given to you?

MR. VELIE: Excuse me, Mr. Martin. You are referring to --

MR. MARTIN: Defendant Natelli's Exhibit J.

MR. VELIE: The portion I showed to the witness?

MR. MARTIN: Yes.

A Yes, it is.

Q All right.

What is that document entitled, sir?

A Eastern Airlines Youth Marketing Plan 1970.

Q That was the title that was on it when you received

it?

A Yes, sir. As best I can recall, that is.

Q There are some handwritten notations that appear at various pages of this particular copy of that document.

Do you recall whether those handwritten notations were on the copy that you had originally received?

A I don't recall if they were or not.

Q Other parts of Defendant Natelli Exhibit J, the first page, do you in any way recognize that as a --

A No, I don't.

Q Then from the third page on there are a number of forms, all of which appear to be basically the same type of form.

Could you tell the ladies and gentlemen of the jury what they are?

A These are account executives time logs which were company forms used by the account executives to report by program the amount of time they spent working on that program in a particular week.

Q Was Mr. Bushnell an account executive who worked on the Eastern program?

A Yes, sir.

MR. MARTIN: Nothing further, your Honor.

THE COURT: Mr. Stillman.

MR. STILLMAN: Just a few, your Honor.

xx CROSS EXAMINATION

BY MR. STILLMAN:

Q Mr. Ball, with respect to this portion of the Eastern commitment that was booked, the fact of the matter is that that entire amount of five hundred odd thousand dollars was not deemed a profit to National Student Marketing Corporation, is that correct?

A I don't think I understand the question, sir.

Q Isn't it a fact, sir, that the company deemed the expense that it had incurred in getting the contract as expenses which would reduce the amount of profit itwould ultimately realize?

MR. VELIE: I object to the form of that question, your Honor. It is confusing.

THE COURT: Mr. Ball, do you understand that?

THE WITNESS: Not 100 per cent, sir.

THE COURT: I share your view.

Rephrase it.

MR. STILLMAN: All right, your Honor.

Q You say that there was of this Eastern commitment approximately $500,000 booked, correct?

A Approximately 600.

Q 600,000, all right.

A Yes, sir.

Q With respect to that amount, that represented what the account executive indicated was the percent, percentage of completion as of that time, is that correct?

A That's correct.

Q With respect to that $600,000, did National Student Marketing deem that entire amount to be profit to it?

A No, sir, not the entire amount.

Q What portion of it was not profit?

A I can't answer that question, sir. I don't know what amount of it would be profit.

Q That is something that would be reflected in the books of the company, sir?

A Yes.

Q All right.

In your work at National Student Marketing Corporation, did you work under Bernard Kurek?

A Yes, sir.

Q Who was it who told you when you could book a particular commitment?

A Mr. Kurek.

Q Who told you when you could write off a commitment?

A Mr. Kurek.

MR. STILLMAN: Thank you, sir. I have nothing

further.

xx REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr. Ball, of course the Eastern letter speaks of an $820,000 figure. Mr. Stillman mentioned a percentage of it which comes out to 519. You mentioned yet another number of 600.

These are adjustments in the percentage of completion at various times of the same contract, is that correct?

A That's correct.

MR. VELIE: Thank you, sir. I have no further questions.

THE COURT: Thank you, Mr. Ball. You may be excused.

(Witness excused.)

MR. VELIE: Your Honor, the Government calls IanDingwall.

I A N D I N G W A L L, called as a witness by the Government,having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VELIE:

Q Mr.Dingwall, how are you employed,sir?

A Iam an accountant with the Division of Enforcement, Securities and ExchangeCommission.

Q You are of course, are you not, assigned to this case?

A That is correct.

Q At my direction, Mr. Dingwall, have you examined Government Exhibit 5, which is National Student Marketing's annual report for 1968 and Government Exhibit 4C, which is the Peat,Marwick general binder for the 1968 audit?

A Yes, I have.

Q Have you performed certain calculations with respect to entries in those documents?

A Yes.

Q Have you made a chart summarizingyour calculations?

A Yes, I have.

Q Would you please step over to the blackboard,

Mr. Dingwall, and take out the chart.

THE COURT: Would you please advise us, Mr. Velie, which chart is this by number?

MR. VELIE: Yes,your Honor. I believe what we should do is call the charts, all of them together, Government Exhibit 65 with sub numbers. This would be 65 sub number 2, Chart No. 2, with which you are familiar, your Honor.

THE COURT: All right. Is there any objection to this chart, gentlemen?

MR. MARTIN: Yes,your Honor.

THE COURT: Are there objections to all of these charts?

MR. MARTIN: Yes,your Honor.

THE COURT: Ladies and gentlemen, I think maybe at this point I am going to ask you to take a recess. The Government intends to offer a number of charts here. Rather than hold up you, the jury, while we go through these objections, Iam going to suggest that you take a recess at this point and we will call you back when we are finished with this job.

(Jury absent.)

THE COURT: All right, Mr. Dingwall. Do you want to place No. 65-2.

Would you please state your objections, gentlemen.

MR. STILLMAN: Yes,your Honor.

With respect to Chart No. 2, we object to it on the ground there is no evidence before this jury to the effect that this company could not report its 1968 income without unbilled accounts receivable.

I suggest that that is exactly what this chart purports to do.

THE COURT: I am sorry,but you will have to run that by again.

MR. STILLMAN: All right, your Honor.

As I understand the theory of this chart your Honor, it is to show the jury what the company looked like at 8/31/1968 with and without the contracts in progress or the unbilled accounts receivable.

I respectfully submit that insofar as it purports to do that, showing without unbilled accounts receivable, it is based on nothing that is inthis record.

THE COURT: I am sorry. You can certainly argue that to the jury. I think there is sufficient to allow the chart to go in.

Yes. Mr. Martin.

MR. MARTIN: Your Honor, the only thing I wanted to add on that is, I have a general overall objection to 15 charts.

MR. VELIE: 11 charts.

MR. MARTIN: 11 charts. In any event, I think that 11 charts does not do what a chart is supposed to do, to simplify and aid the case for the jury. I think by using that many charts, you are just adding confusion to the jury and not clarifying.

THE COURT: If you are correct, I think you might be very pleased. In any event, I am not going to sustain any objection to this particular chart on that particular basis.

Number 2 will be received.

We will proceed then to 65-4.

MR. VELIE: That is correct, your Honor.

THE COURT: I take it, Mr.Stillman, you have a somewhat similar objection here?

MR. STILLMAN: I do, your Honor. I would also point out that the obvious purpose of this chart is to get that first box up even higher than it was before by taking out the tax figure.

I don't see how it adds to our inquiry.

I respectfully suggest that it is there for

misleading and does not advance the inquiry at all.

THE COURT: Mr. Dingwall,this chart is based upon your analysis of Government Exhibit 5 and 4C, but I think perhaps some other things as well, is it not?

THE WITNESS: Government Exhibit 3 is the only thing I would add to that.

THE COURT: All right.

I take it you make the same objection, Mr. Martin, continue, or perhaps maybe an additional one?

MR. MARTIN: Basically the same objection. I think this shows how you are really duplicating items in proliferating charts.

THE COURT: All right. That objection is overruled.

That brings us to 65-5, correct?

MR. VELIE: Yes, your Honor, that is correct.

THE COURT: Is there an objection to this?

MR. STILLMAN: The problem I have with respect to 65-5, your Honor, I do not know how it is that Mr. Dingwall arrives at the numbers that he has inside the boxes. I know where the million, seven comes from and then down the left-hand side they are just calculations. It is the thing that is inside in the boxes that leaves me at a loss.

So I am not really in a position to respond.

THE COURT: Mr.Dingwall, I share part of Mr. Stillman's concern.

Take a look at the rectangle, the top portion thereof, the word "billed in the sum of 202,000-plus," and then 13 per cent.

THE WITNESS: The amount $223,000 comes from Government Exhibit 15.

MR. VELIE: In evidence.

THE WITNESS: In evidence,and represents Sheet 1. It is the total of the entries on that page indicated as being billed.

THE COURT: All right.

Wouldyou give us a similar key to the so-called inactive rectangle which comes next in the sum of 343,000-plus?

THE WITNESS: It would be easier to explain the other numbers since the inactive is really a residual number.

THE COURT: All right.

THE WITNESS: The amount 961,131 as indicated as being written off comes from entries in Government Exhibit 13, Pages 2618 and Pages 2531 and 32.

Would you like me to be more specific?. I can be.

THE COURT: I assume you are next going to proceed to now contract or writeoff.

THE WITNESS: The next rectangle of course is no contract or writeoff in the amount of$212,000. This amount comes from Page 2622 of Government Exhibit 13. I should add that the notations no contract or writeoff appear there.

The amounts do not appear on that page. Those amounts were taken from Page 2618.

THE COURT: Finally where do you get the figure of $343,661 which you caption inactive?

THE WITNESS: It is simply the remainder.

2B

THE COURT: Are there any things in the PMM work papers which indicate that some accountant classified these the same way?

THE WITNESS: No, your Honor, there is no notation that simply says inactive. It really is a word that we have chosen which we believe is descriptive of the amounts that are sitting on the books, that had been booked in 1968.

MR. VELIE: Your Honor will recall that these were booked as of August 1968. This chart speaks of June of 1969. The amounts in the inactive column have neither been billed nor written off. They are just sitting there per year. We picked what we thought was the most neutral --

THE COURT: All right.

Mr.Stillman.

MR. STILLMAN: With respect to Exhibit 5, your Honor, I would first object on the ground that your Honor will recall Government Exhibit 15, uponwhich this chart is obviously based, is a chart or is a schedule which your Honor received only subject to connection with respect to Mr.Scansaroli.

THE COURT: I am going to receive it beyond that status because I believe that the record is now clear enough that everybody necessarily in PMM was obviously

working with management and they are all in this together.

That doesn't mean they are all in this together criminally, of course. But I thinkit is sufficient unto the day to admit this as to Mr.Scansaroli even though he may have had no direct responsibility in part or he may have. EVen if he did, it wasn't criminal. I understand that.

When accountants work with management on an audit they are all busily involved together. For that simple reason alone the subject to connection ruling in the early stages I don't think is binding now, and I will instruct you and Mr. Martin to that effect. I mean to do it the other way, as a matter of fact, and I forgot to do it.

You must have other objections besides that.

MR. STILLMAN: I would like to just make one more point and I obviously would like to be heard as to this part of your Honor's ruling a little bit later. But so far as the period is concerned, June of 1969, I am sure the Government will not disagree that there was no audit in process at that period of time.

THE COURT: That may well be. But again, Peat, Marwick was still the outside accountants of this firm, NSMC. Not only that, there was work going on in the usual course.

In any event, that is all detail. What I am concerned about is this chart, Number 5.

MR. STILLMAN: Insofar as the word inactive is concerned, your Honor, it seems to me based on what I now hear from Mr. Dingwall that it should say residual number or something like that rather than the word inactive, which I submit is an argumentative word.

THE COURT: I am not sure that I accept that. It is a rather bland word, to put it kindly. I don't consider that a significant reason to keep the chart out, particularly since, as you know, I will instruct this jury the usual instructions, these are aide-memoire at best, and that doesn't mean but what the jury is free to disregard these exhibits.

So the exceptions or objections --

MR. MARTIN: Your Honor, I haven't had an opportunity to address myself to this. I object to the chart basically on the ground that without regard to the word "inactive" it seems to me, as your Honor pointed out, that category is something that is not found in Peat, Marwick's work papers at all or is something that was brought to the attention of the Peat, Marwick people during this period.

THE COURT: That is a perfectly fair argument. Just because I am admitting an aide-memoire doesn't mean

that you are completely fettered from bringing this out any way you want, by arguing or questioning, however you want. But this is not the point that really concerns the Court at all.

MR. MARTIN: The other point that I would make,your Honor, is simply that we are going to have another chart dealing with the same situation in August and again it seems to me that that is duplicative and not an aid to the jury since no decision was made in June, the decisions we are talking about were made in August.

THE COURT: Those objections are overruled and 65-5 will be received.

That brings us to 65-8, correct, Mr. Dingwall?

THE WITNESS: That is correct.

xxx (Government Exhibit 65-5 was received in evidence.)

MR. VELIE: Perhaps to save time,your Honor will recall that I was informed on the record last Friday that there would be no objection to so-called comparison charts, of which this is one.

THE COURT: Maybe there isn't. I don't know. Is there an objection to this?

MR.MARTIN: I object to it. That is a perfect summation tool,your Honor. I see no reason for testimony

about it at this point in the trial.

THE COURT: I take it, Mr.Velie, you are going to ask Mr. Dingwall to refer to this in some way.

MR. VELIE: Yes,your Honor, he will refer to it in his testimony as to what the numbers highlighted are and what they contain.

THE COURT: Subject to that the chart will be received. It is already something in evidence in any event. I see no harm in having a blowup to be an aide-memoire to his evidence.

xx (Government Exhibit 65-8 was received in evidence.)

THE COURT: That brings us to 65-9 for identification.

MR. MARTIN: Again, your Honor, my objection is basically the same. I think this is a tool that Mr.Velie has a right to use in his summation. I don't see where it calls for any testimony from Mr. Dingwall at this point in the trial.

THE COURT: Mr. Velie, you want to speak to that?

MR. VELIE: I am going to ask Mr. Dingwall to locate the note referring to the preceding number -- I am sorry -- the number which was the subject of Chart 8,

which he will be able to locate in one of these, and have him testify that he was unable to locate such a note in Government Exhibit 25. This simply shows the pages wherein the note used to be and now no longer resides.

THE COURT: Mr.Stillman.

MR. STILLMAN: Your Honor, I would respectfully submit that Mr.Velie's presentation itself reflects that that is an argument that he chooses to make from the evidence rather than being the subject of testimony.

THE COURT: I am assuming to the contrary,but if it turns out you are correct, why,I will act accordingly at that point. But subject to that I am going to receive 65-9.

(Government Exhibit 65-9 was received in evidence.)

THE COURT: That brings us to 65-10, which is really, as I understand it,nothing more than a blowup of what is now in evidence as Government Exhibit 17B.

MR. VELIE: That is correct, your Honor.

THE COURT: Since the jury has already been shown 17B, I am at a loss really to see the needfor this particularly,unless you tell me, Mr.Velie,you are going to ask specific questions of Mr. Dingwall as an accountant.

MR. VELIE: Yes, your Honor. I am going to ask him to reconstruct for us his calculation of the pooled company numbers which appear in those 3 pages, to tell us what they contain.

Q All right.

Mr. Martin.

MR. MARTIN: Your Honor, I would have the same objection as to the fact that this is an argument chart, not an evidence chart.

THE COURT: All right. You adopt that?

MR. STILLMAN: Yes, your Honor.

THE COURT: All right. Those objections are overruled and Government's Exhibit 65-10 will be received.

xx (Government's Exhibit 65-10 received in evidence.)

MR. STILLMAN: Shall I proceed, your Honor?

THE COURT: Before you do, let me just elicit from Mr. Velie. I take it with respect to this, of course, you will want to ask specific questions quite obviously of Mr. Dingwall?

MR. VELIE: Yes, sir.

THE COURT: In respect to how the consolidated 1968 sales were handled in the proxy statement?

MR. VELIE: Yes, your Honor.

THE COURT: Mr. Martin.

MR. MARTIN: Your Honor, again I think that is an argumentative chart. I don't think anybody who has listened to Mr. Velie ask questions in this proceeding could have over looked the fact that it has come to the jury's attention

that over 1 million of NSM's 1968 sales originally reported have been written off. I don't think that that is a matter that needs Mr. Dingwall's testimony, and it seems to me that that chart is particular argumentative particularly because of the fact you can clearly read what is not disclosed, you cannot really clearly read what they say is disclosed.

THE COURT: And you join in that, I take it, Mr. Stillman?

MR. STILLMAN: Precisely, your Honor. Even the words not disclosed relfect the thought that there is the idea that it must be disclosed. It seems to me this is clearly an argument that Mr. Velie wants to make from the evidence.

THE COURT: Most all evidence is somewhat to that extent. Therefore I can't deny it for that reason. However, it seems to me this is a fair chart, so long as questions are asked.

Again, if we are just going to put these up without more, why, I will be free to make another ruling. But I think 65-11 should be received.

xx (Government's Exhibit 65-11 received in evidence.)

THE COURT: That brings us to 65-12 for identification.

MR. MARTIN: To which I have basically the same

objection, your Honor, that I had to 65-10.

THE COURT: Yes. I understand.

MR. STILLMAN: With respect to 12, your Honor, I am at a loss to understand where it is that Mr. Dingwall as an expert, would be telling the jury that $209,000 gross profit should be reflected on this document as it appears.

I respectfully submit, your Honor, that this once again, and perhaps even more than the prior exhibit, is an attempt to have a little mini explanation before the Government rests its case.

THE COURT: Mr. Dingwall, where didyou get this figure of almost $210,000 gross profit written off?

MR. DINGWALL: That represents the entry 1 or 2 made in the working papers, Government's Exhibit 13, to the 1968 numbers as originally reported. It is the gross profit number there.

MR. VELIE: Your Honor, I think you will find those in entries 1, 2 and 5 on two successive pages in that exhibit in evidence. They are four contracts written off minus the costs of the contracts.

THE COURT: All right. The objections are overruled and 65-12 will be received.

xx (Government's Exhibit 65-12 received in evidence.)

MR. VELIE: 65-14 will be the next in order,

your Honor.

THE COURT: Yes.

MR. VELIE: We are doing 14 before 13, your Honor. They are out of numerical order.

THE COURT: Is there any reason for that? Why can't we take up 13?

MR. VELIE: We can take up 13.

THE COURT: Mr. Martin.

MR. MARTIN: Your Honor, my objection to this particular chart is one that I raised originally in the memorandum I submitted before the trial. There has been no testimony, indeed, there is not a theory in this indictment that this grand jury found that it was wrong to include unbilled accounts receivables in the May 31, 1969 proxy statement.

Therefore, to depict by a chart what that proxy statement would look like with unbilled receivables is not relevant to the charge made by this grand jury.

Therefore, I object to the chart on that ground.

THE COURT: It may be relevant, but it certainly doesn't represent ultimate facts which the Government must prove under count 2.

MR. MARTIN: That's right, your Honor.

THE COURT: How about that, Mr. Velie? I must

say I don't quite understand from your viewpoint why you would want to get into this picture as of May 31, 1969.

MR. VELIE: Your Honor, simply this is a materiality chart. It shows the jury that even though National Student Marketing had acquired a number of other companies unbilled receivables were so terribly material that they still made the difference between profit and loss. So I want to show the jury that the unbilled accounts receivable concept which had by this point turned out to be utterly unreliable, was in fact still terribly material.

THE COURT: It seems to me that you already have ample evidence to do that without a separate chart. Here I think balancing the two arguments of the defense becomes more important, as I see it. This isn't really keyed directly to the ultimate proof which the Government has got to argue. Second of all, it just gets to be a little bit too much.

So in the exercise of discrimination I am going to sustain the defense's objections to number 13. That will not be received.

What about 14?

MR. MARTIN: Your Honor, I think we need the same type of explanation from Mr. Dingwall as to how these numbers come together.

THE COURT: I think that is fair enough. Mr. Velie?

MR. VELIE: Yes, your Honor.

BY MR. VELIE:

Q Mr. Dingwall, do you have your backup sheet with respect to chat chart?

A Certainly.

Q Tell us please first the entires you summarize to arrive at the number in the written off column.

A The amount written off, the amount of $2,055,000, or 61 per cent of the 18 months sales, representatives of summary of serious postings and entries in Government's Exhibit 13 at page 2618, 2531 and 32, page 2683.

The next rectangle represents amounts that are bad or to be written off. They refer to entries on page 2619, 2684, 2687, 2619, of Government's Exhibit 13.

The inactive portion, which is the next rectangle, in the amount of $123,000, is a summary of amounts on page 2683 and 2684 for which no activity has occurred.

The balance is simply a balance. We have labeled it billed or billed in part.

MR. VELIE: Your Honor, we have by this procedure given the benefit of the doubt to the contracts system by assuming that if something has happened to the contract in that fashion, it might be okay. So we have labeled the residual billed or billed in part with respect to this chart.

THE COURT: All right.

MR. MARTIN: Continue.

MR. MARTIN: My primary objection to this chart deals with the fact that approximately $1 million of the amount written off, which makes up the figure 61 per cent in that presentation, represents the Pontiac commitment written off, as I think all of the testimony here indicates, not because anybody suggested that Pontiac did not plan to go ahead with that, but because Mr.Natelli insisted that NSM live up to its agreement not to book commitments for which there was not a written commitment in the form that he and Mr. Davies had agreed would be a binding commitment. That was the reason for that write off. Therefore, to suggest as this chart does, that that is something that should have caused alarm on the part of the defendants, is I think contrary to the evidence and makes the chart false and misleading as far as this jury is concerned.

THE COURT: You loose me.

First of all, I see here written off 2 million --

MR. MARTIN: I am saying half of that is Pontiac.

THE COURT: Yes, I understand that. Again, you baffle me. So you have got that argument. I understand that. That argument isn't prejudiced by this chart. As a matter of fact, one might say that you really get a benefit her: maybe.

I don't follow you.

MR. MARTIN: All I'm saying in answer, your Honor, is I don't think that that is a fair presentation of the facts and, therefore, the chart for that reason should be excluded.

THE COURT: Mr. Stillman.

MR. STILLMAN: I would just supplement that, your Honor, by the fact that as I understand it, the box that is headed "Bad" or "to be written off" comes from what I understand -- comes to refer to the Oberlander work papers.

Am I correct, Mr. Dingwall?

THE WITNESS: I believe you are. Let me refer to my notes for a moment.

MR. STILLMAN: Please do that.

(Pause.)

THE WITNESS: Not entirely, sir. There are amounts indicated as bad or to be written off that are Joseph Scansaroli's schedules.

MR. STILLMAN: From the May '69 schedule?

THE WITNESS: Yes.

MR. STILLMAN: So far, your Honor, as that relates to either of those two items, I would respectfully call your Honor's attention to the testimony of the Government's witness Kurek in which he basically testified that he felt that these commitments should remain on the books as of that period of time, and, indeed, if your Honor will recall, he signed a representation letter to that effect or, indeed, made a correction in it to support the notation that those should remain in the books.

It seems to me that, therefore, that item does not accurately portray the evidence that the jury has heard thus far. For that additional reason I would object to Government's Exhibit 65-14.

THE COURT: Those objections are overruled. 65-14 will be received.

MR. VELIE: Your Honor, with respect to the final chart, chart 65-14, we have amended it with notice to the defense this morning to add under the review, the August review, the entry 8-15 -- this on the Eastern Airlines -- 8-15, DHO and the word booked. If you will write that in on the schedule we delivered to you, you will have an up to date chart 15.

THE COURT: In the column headed comfort letter there appears some minus signs or dashes. In addition, there appear what seem to be asterisks.

What do those two notations or symbols mean?

THE WITNESS: The notation -- the asterisk indicates that these are amounts included in the comfort letter per Mr. Johnston's testimony the other day.

THE COURT: And the dash means?

THE WITNESS: These amounts were not mentioned in the comfort letter.

MR. VELIE: Your Honor, will see that the dash is used consistently through the chart to indicate no entry, lack of an entry.

THE COURT: All right. That anticipated my final question.

Mr. Martin.

MR. MARTIN: Your Honor, I don't think that this chart serves to clarify anything. I am still at a loss as to what its real purpose is, what it explains to the jury.

That is my main objection to the chart. I find it totally confusing. I don't see how this is a real aid to the jury in their review of the evidence in this case.

THE COURT: Mr. Stillman.

MR. STILLMAN: Yes, your Honor. I am somewhat

puzzled --let me start again. I gather that the chart takes some of the work that Mr. Scansaroli did in May, takes some of the work that Mr. Oberlander did in August and then takes work done by Johnston after Mr. Scansaroli left Peat, Marwick, that occurs in October.

Now, the chart goes on to put in this Eastern number at the bottom, and I don't understand how that Eastern number adds to the inquiry. It seems to me, if your Honor will recall, Mr. Velie spent some time trying to prove that Eastern gets written off later on.

Now, we have this chart that has it being booked in August together with other items.

THE COURT: The reason I believe -- Mr. Velie, you correct me if I am wrong-- the chart would have been inaccurate to the extent it purports to portray information of Oberlander's work, because it did not prior to this morning show an entry on August 15 where Oberlander says that the E.A.L. contract was booked.

MR. VELIE: Yes, your Honor. The correction this morning does correct what otherwise might be a misapprehension with respect to Mr. Oberlander's work.

MR. STILLMAN: I point out then, your Honor, I think that Mr.Velie's remark exactly makes my next point and that is the chart does not go on to point out that Pontiac was written off at that time,the chart does not point out that Syntex was written off at that time.

I respectfully submit that this is a selection of some items that the Government wouldlike to argue from in summation rather than attempt to fully explain various exhibits which are in evidence.

MR.VELIE: I would like to answer that very briefly by simply pointingout that the figures and the contracts on this chart are each of them components of the books at proxy printing and delivering time and that Syntex and Pontiac were not and they don't make any sense in this context.

This is a chart that shows things that were still on the books in the proxy, summarizes entries about those contracts.

THE COURT: I see that that would explain Pontiac. Syntex I am frank to say I can't remember.

MR. VELIE: Syntex was written off at the same time as Pontiac, and for the same reason Syntex need not be disclosed here.

THE COURT: You mean that meeting at Pandick Press?

MR. VELIE: I don't recall that there was testimony that it was discussed at Pandick Press, but the entry which writes off Pontiac, in fact, is a double entry. It writes off Pontiac and Syntex identically at the same time on August 18 or thereabouts.

THE COURT: You would so testify,Mr. Dingwall?

THE WITNESS: That is correct, your Honor.

MR. MARTIN: May I add one thing on that,your Honor? As your Honor pointed out, this chart adds day work of Doug Oberlander. Part of that work was the -- Syntex was one of the items he questioned, reviewed and was written off.

If the purpose of adding Eastern is to complete Doug Oberlander's work, that has not been done because

Doug Oberlander's review led to the writeoff of Syntex and it was Doug Oberlander's entry that wrote off Pontiac for that matter.

THE COURT: I don't think that is quite the answer here. I see what you mean, but the Government chooses not to include Syntex and Pontiac because they were not items which were shown on the books as of the time of the proxy statement.

MR. VELIE: Exactly, your Honor.

THE COURT: All right.

The objections to 15 will be overruled.

MR. STILLMAN: May I just inquire of the witness, your Honor -- as to whether or not Eastern was on the books at the time of the proxy statement.

MR. STILLMAN: Isn't it a fact that Eastern went on the books at the same time that Pontiac and Syntex went off?

THE WITNESS: That is correct.

MR. STILLMAN: Judge Tyler, that is precisely my point, that these things happened simultaneously and we are just getting one side of the coin. I object to these --

THE COURT: Every chart I would assume to some extent is not the entire story of the case. That is for

gab-4 Dingwall-direct

sure. That doesn't mean that the chart can't be admitted.

All right. The ruling stands.

Gentlemen, I would like to get counsel to come into the robing room with the reporter and the clerk.

(In the robing room.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: I am in debt to John Martin, Esq., for giving me a copy of this morning's Wall Street Journal article on this case by Frederick Andrews, appearing on Page 7, which we will mark as a Court exhibit, whatever the next number is.

xxx (Court Exhibit 2 marked.)

THE COURT: I have already also received today from -- I don't know whether it was Mr. Jed Rakoff or Mr. Velie --

MR. RAKOFF: Me, your Honor.

THE COURT: All right, Mr.Rakoff has furnished me a memorandum from a personage in the Government, I guess --

MR. RAKOFF: He is the chief accountant at the SEC in Washington, your Honor.

THE COURT: His name is John C. Burton.

MR. RAKOFF: That is correct, your Honor.

THE COURT: Does the Government maintain that I should not reveal this to defense counsel?

I don't think you do,do you?

MR. RAKOFF: No, your Honor. We gave it to you to do whatever you felt best. We don't take a position one way or the other on that.

Your Honor had asked me to report to you.

THE COURT: Yes. I am grateful for that to you.

Gentlemen, I will ask the clerk to mark this as Court Exhibit 3 for identification and then you can read it at your leisure.

(Court Exhibit 3 marked.)

THE COURT: Off the record.

(Discussion off the record.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen, I think we have taken care of our technical problems and are ready to proceed.

Mr. Velie.

MR. VELIE: Thank you, your Honor.

BY MR. VELIE:

Q Mr. Dingwall, you have already told us that you are an accountant with the Securities and Exchange Commission. Are you a certified public accountant?

A Yes, I am.

Q I am going to remind you to please speak in my direction slowly andloudly and I believe if you do the jury will hear you and the reporter will hear you.

We got to the point where I asked you if at my direction you had occasion to examine Government Exhibit 5, which is National Student Marketing's annual report for 1968, and Government Exhibit 4C, which is the Peat, Marwick, Mitchell general binder for the 1968 audit, both of them in evidence. Have you examined them?

A Yes, I have.

Q Did you from entries in those exhibits compute NationalStudent Marketing's consolidated post tax earnings without unbilled accounts receivables?

A Yes, I did.

Q Do you have a chart which summarizes your calculation?

A Yes. Chart 65-2, which has been received in evidence, represents that calculation.

MR. VELIE: I am going to ask now if the jury can see this chart without glare. If not we will try to move it around for you.

Does anybody have a problem? Please raise your hand.

In addition, your Honor, perhaps as an aid to the jury, we have the same thing simply reduced in size, and I will hand these out if I may.

THE COURT: In this connection,Mr. Light and ladies and gentlemen,I want to instruct you that certain charts have been received and will be shown to you. However, these charts are only to be regarded as aide-mamoire, or put more practically and succinctly, they are only as good as the evidence underlying them, and if you were to think that there is no evidence in the case to support anything shown on these charts you would be at liberty to disregard the charts to that extent.

I will instruct you about this again before you retire to deliberate, but I wanted to tell you that now.

Q Mr. Dingwall, first of all, the figure and the black rectangle at the left, that is, is it not, a bar graph, is that correct?

A Yes, it is.

Q Is it fair to say that the line across the page is the profit line, anything above the line representing profit, anything below the line representing loss?

A Yes. This line is a profit and loss line.

Q The black bar graph at the left with the figure $388,000 in it, where did you obtain that figure?

A That comes from Page 18 of Government Exhibit 5 and it represents the amount of net earnings reported therein.

Q Government Exhibit 5 is the annual report for 1968. You are telling us then that this is the earnings reported to the shareholders in 1968, is that correct, or to the public?

A That is correct.

Q The loss figure below the line in the red portion of the bar graph, what does that figure represent? It is a $65,000 loss, is that correct?

A That's correct. This number $65,347 is the loss that would have resulted had no unbilled accounts receivable been recorded on the books as of August 1968.

Q So this is a simple comparison then, is it, between the figure as reported to the shareholders and the public and the figure as it would have appeared without any unbilled accounts receivable?

A Yes,that's correct.

Q This is a so-called bottom line figure, which is to say this is the income after tax?

A Correct.

Q With or without unbilled accounts receivable. Thank you.

Now, sir, did you have occasion to examine the same underlying exhibits in evidence to calculate what the pre-tax results of National Student Marketing were as reported to the public and as they would have been had no unbilled accounts receivable been reported?

A Yes, I did.

Q Do you have a chart that summarizes your calculations?

A Yes, I do. Chart Number 65-4 is illustrative of that calculation.

MR. VELIE: I have small copies for the jury, your Honor.

(Pause.)

MR. VELIE: Does everybody now have what we

call 65-4?

Q Now, Mr. Dingwall, the figure on the left in the large rectangle on the left, where did you find that figure, $699,000?

A Again, that comes from Government Exhibit 5, the annual report to shareholders for 1968. It is the amount of before tax -- excuse me -- it is the amount of consolidated earnings before taxes and extraordinary items.

Q In other words, this figure is for the same year, the same company, as the preceding chart, but this is a before tax figure, is that correct?

A That is correct.

d 5A

Q The small rectangle showing a $26,000 gain, what does that figure represent?

A That amount represents the amount of consolidated earnings before taxes and extraordinary items that would have resulted had no unbilled accounts receivable been recorded at 8-31-68.

Q So I have you, this again is a simple comparison bar graph, the one on the left represents what the public and the shareholders were told, the one on the right represents what would have resulted had no unbilled accounts receivable been booked, is that correct?

A That's exactly right.

Q Now, sir, would you tell us, at my direction, did you have occasion to summarize entries prior to June of 1969 found in Government's Exhibit 13, the proxy binder of Peat, Marwick and Mitchell?

A Yes, I have.

Q Do you have a chart that summarizes the work that you did?

A Chart 65-5 represents my summary of certain notations in Government's Exhibit 13.

Q Exhibit 13 is the proxy binder which was shown to Mr. Oberlander and Mr. Johnston, is that correct?

A Yes, that's correct.

Q And I believe also to Mr. Buck.

MR. VELIE: I have a small copy of chart number 65-5 for the jury.

Q Mr. Dingwall, first of all, this chart speaks as of the date of June 9, 1969, is that correct?

A Yes, it does.

Q That was the date, was it not, Mr. Kurek testified to a meeting between Mr. Randall, Mr. Natelli and others.

A That's correct.

Q This chart is once again a kind of a bar graph, is that correct?

A It is a bar graph.

Q Is it fair to say that 100 per cent of the bar represents the $1,740,000 of unbilled accounts receivable which were booked at year end August 31, 1968?

A Yes. The entire graph represents $1,740,000 of unbilled accounts receivables and sales recorded as of August 1968.

Q The percentage figures in the right hand column, those are the cumulative percentages of the various segments of your graph, is that correct?

A Yes. These numbers are cumulative numbers adding up to 100 per cent.

Q Start at the bottom of that chart, if you would.

You have an entry in there that says "written off." What does this summarize?

A This summarizes amounts in Government's Exhibit 13 that were said to have been written off and the amount is $961,131 or 55 per cent of the 1968 recorded unbilled accounts receivable.

Q Just so there is no confusion about it, is it fair to say that written off means in laymen's terms a deletion from the books or a reduction in book amounts -- perhaps that is the better way to put it -- in the amount shown?

A That's a fair statement.

Q So that I have it then, just under $1 million of unbilled accounts receivables were recorded as having been written off prior to June 9k 1969 in Exhibit 13, the Peat, Marwick binder, is that correct?

A That's correct.

Q Can you tell us whose entries you summarized there? That is, you totaled up certain entries, is that correct?

A Yes, that's correct. Each of these entries appear on a Joseph Scansaroli schedule included in Exhibit 13.

Q In other words, you have totaled up those amounts that I was asking Mr. Oberlander about in part, is that correct?

MR. MARTIN: Your Honor, I object to the form of these questions. The witness has testified what he did.

THE COURT: I will sustain the objection to this question, although I am not sure you were able to finish it, Mr. Velie. Why don't you start over again.

Q Each of these entries was read out loud, was it not, from the witness stand by witnesses who have appeared here in this court, is that correct?

A I believe that's correct.

Q In any event, you found them in Government's Exhibit 13 on pages prepared by JS, Mr. Scansaroli, is that correct?

A Yes, that's correct.

Q The next segment above contains the words "No contract" in quotes and the words "write off" in quotes and an amount of about $212,000. Would you tell us, please, where did you find those entries, Mr. Dingwall.

A Well, again, these represent various entries in Government's Exhibit 13 wherein the amount of the commitment was either indicated as being no contract or write off, and they aggregate $212,745 or 12 per cent of the unbilled accounts receiable recorded in 1968.

Q You added up the totals of the contracts, found that number, and it represents 12 per cent of the total booked in 1968, is that correct?

A Yes, that's correct.

Q All right.

If I am right, that is a cumulative total that is together 67 per cent or over a million dollars was either written off or indicated as no contract or to be written off, is that correct, as of June with respect to the 1968 unbilled accounts receivable?

A Yes, that is correct.

Q Let's skip up to the very top of your bar graph and there's an amount there that says billed.

What entries does that summarize?

A This amount was taken from Government's Exhibit 15, which was a nine-page schedule showing certain billings -- let me start again.

This represents amounts summarized from Government's Exhibit 15.

Q Fine.

Is it fair to say that Government's Exhibit 15 in evidence was identified by Mr. Kurek as the schedule he brought with him to that June 9 meeting with Mr. Natelli and Mr. Randall, if you recall?

A I do recall his testimony to that effect.

Q You have summarized the entries showing the amounts billed by June 9, 1969 on Exhibit 15, is that correct?

A Yes.

Q That amount is $223,000?

A That's correct.

Q The amount billed of the 1968 unbilled accounts receivable is 13 per cent, is that correct?

A Yes, sir.

Q What is the inactive segment?

A The inactive segment is a residual amount. It represents amounts that were either written off indicated as being no contract or write off or billed.

Q This is whatever is left, is that right?

A It completes the rectangle.

Q All right. That is 20 per cent or $343,000 roughly of unbilled accounts receivable, is that correct?

A Yes, that is correct.

Q Which in June of 1969 had neither been billed nor written off nor noted as no contract or writeoff?

A Correct.

Q All right.

Mr. Dingwall, at my direction did you have occasion to examine Government Exhibit 25, which is the final proxy statement in evidence before this jury?

A Yes, I have.

Q Were you able to find disclosure of the writeoffs which are shown here on this chart written off as of June 9?

A No, I was not.

Q Did you have occasion, Mr. Dingwall, to prepare a chart which simply places side by side the corresponding portions of the balance sheet for 1968 found in the annual report for 1968 and in the proxy statement which was prepared later?

A Yes, I did.

Q All right. Show us that chart, please.

Mr. Dingwall, the left-hand portion of the page is, is it not, the asset side of National Student Marketing's

balance sheet as reported to the shareholders in the annual report for 1968, is that correct?

A That is correct.

Q The right-hand side of the page is the corresponding balance sheet, that is again the asset side of the 1968 balance sheet for National Student Marketing which appeared in the proxy statement which was issued later, is that correct?

A Yes, that is correct.

Q You have highlighted on this chart, have you not, the figure for unbilled accounts receivable?

A Yes, I have.

Q Between the annual report and the proxy disclosure of the unbilled accounts receivable figure for 1968, is there a difference?

A Yes, there is.

Q What is the arithmetic difference? How much difference is there?

A The amount that is reported in the proxy statement is exactly $748,762 less than the amount reported in the annual report to shareholders.

End 6B

Q Were you able to find the makeup of the number $748,762, the amount by which the proxy statement is lower?

A Yes. That corresponds to writeoffs made against 1968 for four contracts, Ban, Clairol, Cheseborough Ponds and Listerine.

Q Were you able to find entries in Government Exhibit 13 writing off these amounts?

A Yes. It corresponds to entries 1, 2 and 5 contained in Exhibit 13.

Q Those were Mr.Scansaroli's entries, if you recall?

A I do recall them being his entries.

Q Now, sir, were you able to find any explanation anywhere in Government Exhibit 25, the proxy statement, of the fact that $748,762 of the shareholders' assets has been written off?

A Not in the final proxy statement, no.

Q Did you examine Government Exhibit 17A, Government Exhibit 17, which are -- let me just put a simpler question:

Did you examine Government Exhibit 17, which is an early draft of the proxy statement, to see if there was an explanation of that writeoff in part?

A Yes, I did.

Q Did you examine other documents as well? Did you examine17 and the final proxy?

A Yes. There is an intervening proxy statement as well, an intermediate draft.

Q Did you prepare a chart summarizing what you looked at for the disclosures?

A Yes, I did. Mr.Velie, I have two such charts with me.

Q Let's take a look at 65-9 together first.

Mr.Dingwall, you have here three different pages or at least portions of pages pasted up together, is that correct?

A Yes,sir. This is a photo enlargement of three pages.

Q Each of them is the portion of the proxy statement in which notes to the balance sheet appear, is that correct?

A That's correct.

Q The one on the left is the draft proxy of August 9, 1969, is that correct?

A Yes,sir.

Q Exhibit 17A, fromwhich that page appears, was simply a printer's proof in which no one had written at all, is that correct?

A Yes,sir.

Q Exhibit 17 in the center is, is it not, the proof of the proxy identified as being Mr. Natelli's proof on which he made certain changes, is that correct?

A Yes,that is correct.

Q And the page on the right is the corresponding notes to the balance sheet in the finalproxy, is that correct?

A Yes,sir.

Q In your examination of the August 9 proxy, did you find a note which disclosed a portion of the $748,000 writeoff?

A Yes,sir. Note 1 in the third paragraph makes a ~~partial~~ partial disclosure.

MR. STILLMAN: Move to strike that, your Honor. It speaks for itself as to what it does.

THE COURT: Perhaps, but I will allow it to stand.

Q You say partial, sir. How much is disclosed in that portion of Note 1 in arithmetic terms, how many contracts?

A The amount is statedin terms of net earnings and it represents the net earnings on one of those contracts, the Listerene contract.

Q The Listerene contract earnings are disclosed in the draft proxy of August 9, is that correct?

A Yes.

Q That particular note disclosing the result of the writeoff of the Listerne contract is crossed out, is it not, on Mr. Natelli's proof?

A Yes, sir, it is.

Q In the final proxy was there any disclosure whatever of any of these contracts having been written off?

A No, sir. That paragraph has been deleted.

Q Now sir, did you do a similar examination with respect to the notes on the earnings statement in the proxy?

A Yes, I did.

Q Would you show us the result of your examination, your chart.

MR. VELIE: This is Chart 65-10. The jury may recall that this is in evidence as 17B. I am going to pass it out to the jury again.

Are there enough? I am sorry. That is all we have. Are you able to share?

MR. STILLMAN: You c-an have mine.

MR. VELIE: Thank you, Mr.Stillman.

Mr.Stillman has been good enough to share his copy with us too.

Q Mr.Dingwall, once again you have put up

together three corresponding pages from the proxy statement, is that correct?

A Yes,that's correct.

Q These are the notes to the earnings statement relating specially to 1968, but there is also a reference to other years besides 1968, is that correct?

A Yes,sir.

Q The one on theleft is the one fromthe draft proxy of August 9, is that correct?

A Yes,sir.

Q The one in the center is from Mr. Natelli's workin draft, Government Exhibit 17, is that correct?

A Yes,sir.

Q The one on the right from the final proxy,Government Exhibit 25?

A Yes, sir.

Q Now, sir, the Government Exhibit 17, which was thatAugust 9 draft on the left, did you find a disclosure of a portion of the $748,000 of contracts written off?

A Yes. Note E indicates that a retroactive adjustment for contract losses as referred to in Note C in the amount of$70,200 has been made.

Q Once again, this is a disclosure of the writeoff of the Listerene contract alone, is that correct?

A That's correct.

I want you to read, if you will, the narrative portion of that disclosure in note E.

MR. VELIE: I am sorry. The jury has it before them. I am simply going to ask the jury to read it themselves. On the lefthand side.

Q The amount of the Listerine contract itself was $70,200, is that correct?

A Yes, sir.

Q Costs associated with that contract, if I recall it correctly, are $49,200, is that correct?

A Yes, that would be correct.

Q So that the profit of the Listerine contract which is written off is the $21,000 which is disclosed in note C, is that correct?

A Note C, yes, discloses that, as well as the second portion of note E here.

Q There is a further disclosure in note E, is that correct?

MR. MARTIN: Your Honor, I object to the conclusions that are contained in the questions which I don't think are accurate.

THE COURT: I am going to sustain the objection to that as to form. I think that can be rephrased.

MR. VELIE: Very well.

THE COURT: Ask him directly what it is you want to ask him.

Q Looking at the lefthand side of this exhibit here, the page on the left, there is a number of $70,200 in brackets. Tell the jury if you will what a number in brackets in accounting means?

A It means a reduction or a loss.

Q That is a subtracting entry, is that the idea, it shows that it has been subtracted?

A In this case it shows that there is a subtraction.

Q Again, is that 70,200 the Listerine contract?

A Yes, it is.

Q Down below in the net earnings portion of this note a number appears in brackets in the amount of $21,000. Would you tell us what that $21,000 number is?

A That is the gross profit on the Listerine contract.

Q In other words, the portion of the earnings being written off, is that right?

A Yes, that's correct.

Q There is a line in the footnote under net sales which says "pooled companies reflected retroactively" and the number for 1968 in the amount of $6,389,164.

First of all, will you tell us, please, what pooled companies are, Mr. Dingwall?

A These are companies that are added into or in this case were added into National Student Marketing after the date of the August 1968 report.

Q I see. After the 1968 report came out other companies were added and this line was to add their sales to National Student Marketing's results for 1968, is that correct?

A Yes, that's correct.

Q That number there, that $6,300,000 some odd number, is that the true figure for the pooled companies sales included in there?

A The arithmetic total of the pooled companies sales referred to in this footnote would approximate some $7 million. This number is $6,389,000. It is --

Q Let me just ask you what that number, the $6,300,000 number there in the draft, actually represents.

A Well, it is the arithmetic total of three pooled companies sales minus some $600,000 of contract losses.

Q So that pooled companies number indicates the sum total of three additional companies minus the sum of three National Student Marketing contracts which have been written off, is that correct?

A That's exactly right.

Q What is the amount, the figure of the contracts

which is subtracted from the pooled companies?

A If I could refer to my notes I will tell you the exact amount.

I am sorry. Could I have the last question again?

Q What is the make up of the $678,000 subtracted from the pooled companies?

A This is the arithmetic total of the Clairol contract, the Cheeseborough contract and the Ban contract. They total together $678,562.

Q That write off has been taken from the pooled companies instead of from the National Student Marketing line, is that correct?

A That's right.

Q Those three contracts are, are they not, the three contracts written off as recorded in Mr. Scansaroli's entry in Exhibit 13 entries 1 and 2, is that correct?

A More specifically, entry 2.

Q That was a May 1969 entry, is that correct?

A Yes, it was.

Q I draw your attention to the center panel of that contract, Mr. Natelli's proof. Certain changes are made there in the handwriting of Mr. Natelli. You can't identify Mr. Natelli's handwriting, but the testimony is that is Mr. Natelli's handwriting, certain changes made there.

A Yes, a number of changes have been made.

Q First of all, what happened to the explanatory note, note C, which disclosed the write off of the Listerine contract?

MR. MARTIN: Objection to the conclusion, your Honor.

THE COURT: Yes. Again, I don't think you have to put these questions in this form.

MR. VELIE: Very well.

Q The chart speaks for itself. Note C has been crossed out and there is a carot concerning another note instead, is that correct?

A Yes.

Q Would you read that out loud for us?

A "Figures for 1968 have been restated in certain instances to make their presentation consistent with current accounting practices. There was no material effect as a result of such restatement."

Q All right.

The line disclosing the write off of the Listerine contract in the amount of $70,200, the sales portion of the footnote has been crossed out, is that correct?

A Yes, that's correct.

Q The pooled companies number has been crossed out as well, is that correct?

A Yes, that has been deleted for '68.

Q Dropping down to the earnings portion of the footnote, the disclosure of the write off of earnings with respect to the Listerine contract has been written off as well, is that correct?

A Yes.

Q I should say has been crossed out. I've only asked you about the disclosure of the number on the earnings line. That's simply crossed out, is that correct?

A Yes, it has.

Q Have the earnings been subtracted from another line in that note, the earnings on the Listerine contract written off?

A Yes, they have.

Q What happened to the $21,000 of the Listerine profit written off?

MR. MARTIN: Objection to any characterization.

THE COURT: I think in addition to the point Mr. Martin makes, that's a bad question from your viewpoint. Start again. Rephrase it.

Q Is the pooled companies number adjusted here in the amount of $21,000?

A Yes, it has been downwardly adjusted.

Q $21,000 has been subtracted from the pooled com-

panies, is that correct?

A That's correct.

Q Instead of from National Student Marketing?

A That's correct.

Q Moving over to the final panel which represents notes to the earnings statement in the final proxy, Government's Exhibit 25 for identification.

First of all, Mr. Dingwall, if you know, note D in the final proxy is the footnote at issue in this case, is that correct?

A Yes, it is the footnote that is mentioned in the indictment.

Q Is there any disclosure in the notes to the earnings statement in the final proxy of contract write offs of over $1 million in 1968?

A No, sir.

Q Is there any disclosure of the three-quarters of a million dollars of those contracts which were written off retroactively?

A No, sir.

Q Is the replacement note drafted in Mr.Natelli's hand in the final proxy, Exhibit 25?

A Yes, it is. It appears in Note C.

Q The final proxy?

A In the final proxy,yes.

Q All right. Turn to the sales portion of the footnote, the line that says pooled companies reflected retroactively and the Number six million five hundred some odd thousand dollars.

Mr. Dingwall, is the number six million five hundred some odd thousand dollars the true number for the sales of the pooled companies which are summarized in that entry?

A No, it is not.

Q What does the $6,500,000 number represent?

A It represents the arithmetic total of four pooled companies' sales minus 748,762 of National Student Marketing contract losses that have been subtracted therefrom.

Q First of all, this particular final proxy has pooled in four companies instead of the three companies

pooled in the draft, is that correct?

A Yes.

Q All right. And the number you tell us is the sum total of those four companies' sales minus the four contracts you have been telling us about?

A Yes,that is correct.

Q The total of the four contracts is how much?

A 748,762 of sales.

Q In short, roughly three-quarters of a million dollars of National Student Marketing sales has been subtracted from the pooled companies instead of from National Student Marketing, is that correct?

A That's correct.

Q The line for earnings pooled companies, $385,000, is that the actual sum total of the earnings of the four companies that is supposed to be added together there?

A No, it is not. The arithmetic total of those four pooled companies' earnings.

Q That has been reduced by about $21,000,is that correct?

A Exactly $21,000.

Q Is there any disclosure of these subtractions in the notes to the earnings statement?

A None whatsoever.

Q Is there any disclosure of these subtractions anywhere in the proxy statement?

A Nowhere at all.

Q I am going to askyou to turn to thenext chart, 65-11.

MR. MARTIN: Your Honor, at this point,since I think this does no more than just summarize the testimony that we have just gotten from the witness on these items, I would object to any further testimony.

THE COURT: I am inclined to agree, Mr.Velie. Put differently, to the same effect, however, we have already had this testimony from Mr. Dingwall.

MR. VELIE: Allow me to ask one further question, your Honor, which may be of some assistance.

End 8B

Q Mr. Dingwall, the number for net sales of National Student Marketing under the 1968 column here, 4,989,446, is that number identical to thenumber reported to the shareholder and to the public in the annual report for 1968?

A It is identical.

Q You have told us already the components of the $6,500,000 number, which includes a subtraction of about three-quarters of a million dollar sales writeoffs, is that correct?

A Yes,that's correct.

Q I believe you have told us that there is no disclosure of the $1 million writeoff anywhere in the proxy?

A That is also correct.

Q Let's move to the next chart. Chart No. 65-12, simply shows the second portion of the footnote we have all been looking at now for the last couple of charts, is that correct?

This is the earnings portion of the footnote mentioned in the indictment?

A That's correct.

Q Your chart indicates that the number in the amount of $209,750 of gross profits was written off and not disclosed anywhere. Tell us, sir, please, where you found the number $209,750?

A Well, it is the arithmetic total of the gross profit on the four contracts that were written off by Mr.SCansaroli, entries 2 and 5 in the proxy binder.

Q The proxy binder being Exhibit 13, is that correct?

A Exhibit 13, that is correct.

Q So that Ihave it right, that figure is arrived at by taking the total gross number of the four contract sales, Clairol, Cheseborough, Ban and Listerine, subtracting the costs associated with those contracts, the difference is profit in the amount of $210,000, is that correct?

A Yes,sir.

Q That had been written off, is that correct?

A That is correct.

Q And that, I take it -- let me ask you. Was that disclosed anywhere in the final proxy, Government Exhibit 25, the $210,000 of gross profit for 1968 was written off?

A No,sir, it is not disclosed anywhere.

Q The next number is a tax credit number. Where did you find that number?

A That number appears in the final proxy statement as a tax credit. It corresponds to an entry made in the deferred tax account by Mr.Scansaroli's entry.

Q That number is, is it not, the deferred tax

portion of the entry Mr.Scansaroli made writing off three contracts, is that correct?

A Yes,sir.

Q Those are the contracts that total $678,000 of gross profit, is that correct?

A Of sales.

Q Of sales, $678,000 worth of sales, minus the associated costs, they yielded profits, those three contracts, of $188,750, is that correct?

A That's correct.

Q And the tax credit is in that exact same amount, is that correct?

A They are one and the same.

Q However, the tax credit is an upward adjustment equal to 188,750 whereas the writeoff is a downward adjustment of 188,750 of profits being written off, is that correct?

A That's correct.

Q Was there any disclosure in the notes or elsewhere in the proxy statement that the tax credit had been used to reduce the amount of profit writeoff?

MR. MARTIN: Objection to the form of the question,your Honor.

MR. VELIE: I will withdraw it and try a new question.

Q What is $21,000 down below?

A Well,it is the sum of these two amounts.

Q In other words, the minus adjustment in the amount of roughly $210,000 and the plus adjustment in the amount of $188,000, is that correct?

A Yes,those two numbers yield the$21,000 loss.

Q I believe you have told us that $21,000 loss was subtracted from the pooled companies instead of being disclosed as a NationalStudent Marketing loss, is that correct?

A That is correct.

Q Is there any disclosure anywhere in theproxy statement that these two large entries have been netted together or added together to yield only this small entry?

A There is no disclosure of that.

Q Is there any disclosure anywhere that the result of netting these two together has been substracted from the pooled companies instead of from National Student Marketing?

A No,sir, there is no disclosure.

Q Let's take that chart down. I have a question or two to ask you.

Using Government Exhibit 25, have you computed the National Student Marketing consolidated pre-tax and pre-credit earnings for the May 1969 period?

A Those amounts are disclosed in the final proxy statement.

Q What is the amount disclosed in the final proxy statement ffor the May 1969 period, that is, the first three quarters of 1969?

A The pre-tax and pre-extraordinary items amount, as I recall, is $699,000. In other words, the profit from operations, if I have it correctly, is $699,000.

Q This is the company as it existed as of the first three-quarters of 1969?

A Yes,that is the nine months result.

Q Including the new companies that had been added on?

A Yes.

Q Did you compute the amount for National Student Marketing - -

MR. MARTIN: Your Honor, I am going to object because this is a matter we covered in the absence of the jury and I think it is improper for Mr.Velie to now ask this question in the presence of thejury in view of your Honor's ruling at that point.

MR.VELIE: The rulinghad to do with the chart, not with testimony.

THE COURT: That is correct. But may I suggest that we finish withthe charts and then if there is anything you want to ask Mr. Dingwall which is not included in the charts or referred to in the charts directly or indirectly you may, at which time the defense counsel may object if they see fit.

Let's go to the next chart.

MR. VELIE: Very well.

Q Chart Number 15, please. I am sorry. I left one out?

A 14.

Q Let's have 14.

Mr.Dingwall, is it fair to say that this chart speaks not just to the 1968 unbilled accounts receivables but to the total of unbilled accounts receivables booked by National Student Marketing for 1968 and for the first six months of 1969?

A Yes, that is a fair statement.

Q This summarizes certain entries as of August 18, 1969, is that correct?

A Yes, that's correct.

Q August 18 was, was it not, the day before Mr.

Oberlander spoke with Mr. Kurek about his schedule of unbilled accounts receivables, is that correct?

A Yes,sir.

Q And also Mr. Kurek spoke with Mr.Scansaroli about that schedule. What was the total amount in dollar figures of National Student Marketing's unbilled accounts receivables for that 18-month period, which was all of 1968 and the first six months of1969?

A The total recorded unbilled accounts receivable was $3,347,775.

Q And that represents 100 per cent, does it not, of your bar graph?

A That entire amount represents 100 per cent of the bar graph,yes.

Q So this bar graph then speaks to the $3.3 of unbilled accounts receivable for the period which lasted 18 months, '68 and the first half of '69?

A That's correct.

nd 9A

Q Did you summarize entries as of August 18, 1969 which write off unbilled accounts receivables?

A Well, I summarized entries that I had found in Government's Exhibit 13 that indicated that an amount had been written off. That total is the $2,055,000 number of 61 per cent of the 3.3 million number that is displayed in this rectangle here.

Q So that I have it, over $2 million or about 61 per cent of unbilled accounts receivable for the 18-month period had been written off as of August 18, 1969?

MR. STILLMAN: This is repetitious, your Honor. The witness gives the answer, then Mr. Velie puts the answer back in the next question.

THE COURT: I would agree that certainly this doesn't need to be repeated.

Q Would you tell us, then, did you summarize other entries for the next upper segment of this bar graph, over here, where it says "bad or to be written off"?

A Yes. I similarly summarized amounts in Government's Exhibit 13 that bore the notation "bad or to be written off." Those totaled $310,000 or 9 per cent of the 18 month recorded unbilled accounts receivable sales.

Q Incidentally, were the written off entries Mr. Scansaroli's entries, if you know?

A When you say "written off" do you refer to this section here?

Q Yes, the bottom section.

A They were not all together Mr. Scansaroli's notations.

Q Were there Mr. Oberlander's notations in there as well?

A Yes, sir.

Q The next segment, is it fair to say that you have summarized Mr. Oberlander's and Mr. Scansaroli's reviews?

A Yes, this section, the bad or to be written off section, represents that summary.

Q That is a cumulative total of 70 per cent, is it not, which areeither written off or bad or to be written off, is that correct?

A That is 70 per cent.

Q The next segment, labeled "Inactive," 4 per cent or $123,000, what is that made up of?

A The inactive portion here represents amounts that were outstanding as of May 31, 1969 for which nothing had transpired. By that I mean it had neither been written off nor had it been billed out to the customer. It was merely sitting on the books.

Q And the portion that says "billed or billed in

part," what is that?

A It is really the balance of the rectangle. It is a residual amount.

Q In other words, you have given the benefit of the doubt there to certain of the contracts, if there was no other kind of entry you left it in billed or billed in part, is that right?

A That's correct.

Q Mr. Dingwall, with respect to the nine-month sales to which I called your attention, did you perform a calculation to see if unbilled acounts receivable were taken out whether National Student Marketing would have had any operating gain at all or would have had a loss?

A Were it not for the unbilled accounts receivable National Student Marketing would have had --

MR. MARTIN: Your Honor, I object to that.

A --an operating loss.

Q For the nine-month period?

A For the nine-month period.

MR. MARTIN: Object, your Honor, move to strike all of this as not relevant to the charges here on trial.

THE COURT: Overruled.

Q Your answer is if unbilled --

MR. MARTIN: Your Honor, I object to the parrot

act that we are getting.

MR. VELIE: There was an interruption in the question and answer, your Honor.

THE COURT: I am sorry. I don't agree with that. Mr. Dingwall answered it unequivocally and there it stands.

MR. VELIE: Well, your Honor.

Q You have one further chart, do you not, Mr. Dingwall?

A Yes, I do.

Q Would you put it up, please, so that you can explain it to us.

MR. VELIE: With apologies to the jurors, your Honor, we do not have reduced size copies of this chart. So I will ask the jurors if they all have a clear view of the chart 65-15.

Q What have you totaled or summarized in this left-hand column labeled "client," Mr. Dingwall?

A Well, I think it speaks for itself. These are simply the names of the clients of National Student Marketing for which there was an unbilled accounts receivable or -- it is really a selection of the clients.

Q These are certain unbilled accounts receivable, is that correct?

A Yes, it is.

Q Is it fair to say that each and every one of these unbilled accounts receivable in that lefthand column all the way down to and including Eastern were on the books as components of the report for the nine-month period ended May 31, 1969.

A Yes. These amounts were all outstanding as of May 31, 1969.

Q In the next you place an amount corresponding to the contract, is that correct?

A Yes, I did.

Q Is it fair to say that these amounts are the amounts which you found to be outstanding as of May 31, 1969 on the books with respect to these particular clients?

A Yes, sir.

Q This next column, what does this whole column here summarize?

A Well, it summarizes entries that I found as a result of Mr. Scansaroli's May review.

Q You have summarized, things that Mr. Scansaroli recorded with respect to these contracts in May of 1969, is that it?

A Each of these amounts represented entries in Mr. Scansaroli's schedules, yes.

Q If you recall, these are the ones which Mr. Oberlander pointed out for us, is that correct, on the stand?

A I believe so, yes.

Q And the date of each such entry is May 22, 1969, is that correct?

A That's the date that appears next to Mr. Scansaroli's initials on the working paper.

Q And Mr. Scansaroli's initials, of course, appear here, JS, is that right?

A That's correct.

Q In the comment column you have taken a portion of the comment, is that correct, or what is written on by Mr. Scansaroli himself with respect to those particular contracts, is that correct?

A Well, I believe it would be fair to say that these comments appear on Mr. Scansaroli's schedules rather than in his hand.

Q I see. It may have been written by somebody else but attached to his schedule, his work paper.

A That's correct.

MR. VELIE: I am going to read a portion of this to the jury. The Barnes-Hind contract in the amount of $22,400 on May 22, 1969, the comment delete. The Campana

contract in the amount of $21,900, May 22, 1969, the comment write off.

The Faberge contract in the amount of $53,775 on May 22, the comment no contract.

The Gossard contract in the amount of $53,773 on May 22, 1969, the comment no contract.

The pace commentment, left on the books, $14,492, the comment at May 22, 1969, write off.

Carnation, the amount left on the books at May 1969, 11,200, the comment May 22, delete.

Q Now, this next column here, including this portion down here, what does that summarize?

A It summarizes various entries that I found in the working papers pertaining to the August 1969 review of the proxy statement.

Q The August 1969 review was performed by Mr. Oberlander, is that correct?

A Yes. The initials DHO are Mr. Oberlander's initials.

Q And with respect at least to these first four contracts that Mr. Scansaroli had noted or are noted on his work papers, on August 15 Mr. Oberlander noted Barnes-Hind commitment as bad, on August 15, Mr. Oberlander noted the Campana commitment as bad, on August 15, Mr. Oberlander noted the Faberge contract as bad, and on August 15 he recognized the Gossard contract as bad; is that correct?

A That's correct, sir.

Q In addition, Mr. Oberlander found certain other commitments not particularly noted by Mr. Scansaroli, is that correct?

A Yes, that is correct.

Q These are for Barnes-Hind in the amount of $47,850, noted at August 15 by Mr. Oberlander bad, Bazzar commitment in the amount of $5,580, at August 15, noted by Mr. Oberlander as bad, Eastern commitment -- this is not the large Eastern commitment?

A No, sir, it is not, smaller.

Q Is this a 1968 contract?

A I believe it is a '69 contract.

Q --in the amount of $27,000, at August 15 Mr. Oberlander notes it in the bad column the Schick commitment in the amount of $30,000, at August 16 Mr. Oberlander notes it as duplicated.

That was in the bad column, is that correct?

A As I recall, it also appeared in the bad column.

Q All right.

The contract in the amount of 32,000 for Tanya on August 15 Mr. Oberlander notes it as bad, in the bad column, is that correct?

A That's correct.

Q Mr. Oberlander made yet another entry on August 15, 1969, is that correct?

A Yes, as indicated here.

Q That had to do with the Eastern commitment in the amount of $519,000, and on August 15, Mr. Oberlander noted that it was booked by the company as part of the May 31, 1969 earnings statement, the first nine months of the year.

A That's correct.

Q All right.

There's one other thing here. This is the comfort letter worked on by Mr. Johnston. He showed us his schedule and testified to certain contracts, is that correct?

A Yes, sir.

Q You have indicated by an asterisk, have you not, on the line --

MR. MARTIN: Do we need Mr.Dingwall for this,

your Honor?

A Tell us what you indicated with the asterisk?

THECOURT: I think if you can ask him what the symbols mean so we can all follow, that would be sufficient unto the day.

Q What does the asterisk mean?

A The asterisk simply means that it was included as a comfort letter amount. The dashes mean that they were not included as a comfort letter amount. These were read to us the other day by Mr. Johnston.

Q Once he indicated it is in the comfort letter you put an asterisk, is that correct?

A Yes, sir.

MR. MARTIN: Objection, your Honor.

THE COURT: Yes, Mr. Velie. That's just repetitious and is totally unnecessary. Mr. Dingwall answered and that's enough.

Q You have a subtotal and a total, a total of all the contract amounts analyzed on this particular chart as shown as $839,324, is that correct?

A Yes, sir, that's correct.

Q Of which eastern is $519,000 some odd?

A Correct.

MR. VELIE: Gentlemen, you may inquire.

THE COURT: Where do you wish Mr. Dingwall to be?

MR. MARTIN: In Washington, your Honor.

MR. STILLMAN: I'm glad to have him among us.

THE COURT: Where?

MR. STILLMAN: I do have some seated questions and some standing questions. Perhaps I could start with the seated questions, let the jury rest for a bit, and we can go on to the standing questions.

THE COURT: Very good.

xx CROSS EXAMINATION

BY MR. STILLMAN:

Q Mr. Dingwall, how long have you been employed by the Securities and Exchange Commission?

A Since January 26 of this year.

Q 1974?

A That's correct.

Q All right.

So that you were not employed by the SEC in 1968 or 1969?

I assume that's an obvious fact, is that right?

A Yes, sir.

Q So, therefore, you did not perform any work on behalf of the Securities and Exchange Commission in 1968 or in 1969 with respect to National Student Marketing Corpora-

tion, is that also true?

A That is also true.

Q Do I understand it then that the sum total of your knowledge with respect to this matter comes from documents that you have looked at, testimony that you have heard in the courtroom, testimony that you have read which might have been given at the SEC or other places, is that right?

A That's a fair summary.

Q You have no personal knowledge of any of the events that occurred in 1968 and 1969, some of which are portrayed on the schedules or the charts which you prepared, is that correct?

MR. VELIE: I object to the form of the question, your Honor.

THE COURT: I will allow that.

A That's correct.

Q All right.

The charts that you prepared, as I understand your testimony, came about as a result of some requests from Mr. Velie over here, is that right?

A Yes, sir.

Q He said to you that he wanted a chart to reflect a certain thing and you set out to review the records or the exhibits in evidence to determine what should be on that

chart, is that right?

A Well, I would say it was probably the other way around. Together we reviewed documents in the working papers which led ultimately to the charts.

Q Speaking of that, do I understand it that all of the entries which are reflected on these charts come from either the work papers or the records of National Student Marketing Corporation, is that correct?

A Some do and some don't.

Q Some don't.

Are there entries on any of these charts which are not contained in either of those two places?

A Well, I would be -- no, the answer to the question is no.

Q In other words, if we trace back, if you and I wanted to take the time, you could show me from each of the entries on these various charts some place in either the work papers or the exhibits which are contained in these boxes of Mr. Velie's in which that information is contained, is that correct?

A Yes, sir.

Q All right.

Insofar as the information on the charts are concerned, you put on what you and Mr. Velie determined should

be on to make the point that you and Mr. Velie wanted to make, is that correct?

MR. VELIE: Objection as argumentative, your Honor.

Q Isn't that right?

THE COURT: Just a moment, I must say I think you ought to rephrase that.

MR. STILLMAN: All right, your Honor.

Q In drawing the charts did you and Mr. Velie have a conclusion which you wanted to draw from the information that you put on the charts?

A I think that's a fair statement.

Q All right.

For example, if we looked at chart number 2 --

MR. STILLMAN: You will trust me to move these around, Mr. Velie?

MR. VELIE: Of course.

Q This chart, number 2, you took from looking at Government's Exhibit 5, which is the annual report for National Student Marketing Corporation for the year ended August 31, 1968 and I'm referring to the number above the line, is that right?

A Yes, sir, that's correct.

Q All right.

Insofar as this number below the line, that is something that you calculated after you had some conversations with Mr. Velie, is that correct?

A Yes, that's correct.

Q All right.

In drawing up this chart you and Mr. Velie did not feel it was necessary to put onto the chart the footnote which appears in Government's Exhibit 5 which explains the contracts in progress, is that correct?

A Thatnote is not on that chart.

Q All right, sir.

Chart No. 4 is something that you started with information that was contained in the annual report itself, is that right?

A Yes, sir.

Q And thenyou figured out the amount of the profit or loss that the company would suffer or have before taxes, is that right?

A Well, there is no loss indicated. It is a small profit.

Q Small profit?

A Yes.

Q As far as you knew, National Student Marketing Corporation was a taxpayer in 1968, wasn't it?

A Absolutely.

Q And the taxes were reflected in this other schedule over here, Chart No. 2, right?

A Yes, that is an after tax calculation.

Q After taxes. You wanted to show us this one, this nice big bar in there before taxes, is that the idea?

A Yes, sir.

Q Now look at Chart No. 5. Chart No. 5 is one of these nice bar graphs which you prepared for us, is that right?

A Yes, sir.

Q You started with this million seven over here which was the number that is reported in Government Exhibit 5, is that correct?

A It is included therein.

Q Included therein.

You went down to the bottom here and you had $961,000 -- I hope everybody can see this -- $961,000, which you reflect as written off and you get that information from summary of entries in Government Exhibits 3, 13 and 15, right?

A Yes,sir.

Q GovernmentExhibit 3, is that Mr.Scansaroli's set of work papers?

A It is the special sales binder.

Q Special sales binder, right.

And some of the information that you got in that chart you got from these work papers that Mr.Scansaroli had prepared back in 1968, is that right?

A Most of the schedules were actually prepared in 1969.

Q All right. Government Exhibit 3, are these work papers that Joseph Scansarolie prepared back in 1968, correct?

A That is correct, yes.

Q And you utilized this to help you prepare Government Exhibit 65-5, that particular chart, is that correct?

A Yes, there is one number that comes from there.

Q One number that comes from there. Which number is that?

A The 1,740,850.

Q Government Exhibit 13 which you also utilized --

MR. STILLMAN: If I might see that, Mr.Velie, please.

MR. VELIE: Yes,sir.

Q Government Exhibit 13 is another set of Peat, Marwick work papers and this is the one that is headed proxy binder that we have heard so much about, is that right?

A Yes,sir.

Q Some of the information that you have on Government Exhibit 65-5 is containedin this document as well, correct?

A Correct.

Q And the last, Government Exhibit 15, is the schedule which Mr. Kurek told us about was prepared some time in June of '69 as I recall, is that right?

A I think it was him, it was prepared for June 9th

meeting.

Q This item here written off,$961,131, isn't it a fact, sir, that that consists in its greatest part in the so-called Ron Michaels contracts?

A $748,000 has been attributed to Ron Michaels contracts.

Q I don't want to touch this schedule. I am going to leave that there. If we just drew a line over here, we can say --

A 748,762.

Q 748,762.

A That is correct.

Q That is Ron Michaels. If one wanted to you could have, in writing up this chart on the written off, drawn a line out here or perhaps even put it in the box that of that 961,000, 748 represented this so-called Ron Michaels contract adjustment, right?

A At least, yes.

Q Those Ron Michaels contracts are the ones that were written off retroactively, is that right?

A Yes,sir.

Q There has been testimony, has there not, that they were written off retroactively because of some employee fraud by Mr. Michaels, is that correct?

A I don't recall the word fraud being used. I think the words were unethical conduct.

Q Unethical. I will take that.

So that we could say one could have gone on to write in here, written off retroactively because of Ron Michaels' unethical conduct, is that right?

A That is the stated reason.

Q All right. Of course, if we did that and this was written off retroactively, that could in a sense take the million seven and drop it downto approximately a million dollars, is that correct?

A It had that effect, yes.

Q All right. The item over here that says no contract or writeoff, where did you say that came from?

A Again these were summarized from entries in Government Exhibit 13.

Q Government Exhibit 13?

A Yes.

Q And the entries that we are talking about insofar as this one is concerned are entries which were prepared by -- is it Mr.Scansaroli or Mr. Oberlander or both?

A They are actually on Mr.Scansaroli's work sheets.

Q All right. Those work sheets, by the way, are right in this binder, is that correct?

A Yes, sir.

Q He has his initials on there, J.S. and the date he did the work, the date he put them onto the piece of paper, is that correct?

A Yes, they are dated.

Q You took that and put that on your schedule, correct?

A Yes,sir.

Q Does your schedule reflect or this chart reflect any of the testimony that we heard from Mr. Kurek with respect to his position on the contracts that were discussed between Kurek and Oberlander and then Kurek and Scansaroli?

MR. VELIE: Excuse me. I object to that. This is a June 9, not an August chart. You are three months ahead of yourself.

THE COURT: Sustained.

MR. STILLMAN: June 9, okay.

Q This doesn't really take into account Doug Oberlander at this point then, is that correct?

A No, it doesn't.

Q Right. Mr.Velie just properly pointed out this is June 9. Mr. Oberlander doesn't do any work on this item until August of1969?

A Yes, that's correct.

Q All right. The billed item you explained to us. This inactive item,that is, is it not, what accountants sometimes refer to as a plugged number? That is, you take a bunch of numbers, take others out and now you have to make the thing balance, so you plug in a number, is that right?

A Accountants don't like to use the word "plugged," but I think that that certainly is a layman's idea of what that amount is.

Q Rather than call it plugged you would call it residual, is that the idea?

A Residual or inactive.

Q If we wanted to in drawing up this chart where you had inactive, we could have put over here instead of inactive, we could have put the word residual, is that right?

A Yes, I think that is just as fair.

Q Of course, it is obvious from the chart itself, the chart does not reflect the costs which were related to these particular contracts, is that right?

A No,sir.

Q We do know, do we not, that there are in the books and records that are here in evidence before the ladies and gentlemen of the jury costs related to this million seven of approximately a million one, thereabouts?

A Million, 015.

Q A million 015. You are right on it.

Leaving us with profit of seven hundred odd thousand dollars, right?

A Yes, sir.

Q Nevertheless, the costs you determined not to reflect in this particular schedule, is that right?

A That is a sales or an assets schedule.

Q You also testified with respect to Exhibit 9 and some testimony with respect to Exhibit 10. What those are, as I understand it, are pages selected from the proxy material in various times of the history of the statement, that is, from the first draft to the last, andyou kind of put them side by side to help us see the whole picture together, right?

A Yes,sir.

End 9B

Q Exhibit No. 65-9, this column over here is the first draft, is that right?

A It is an earlier draft.

Q The draft is dated August 9, 1969, correct?

A Yes,sir.

Q Do you know whether or not that draft was circulated to anybody outside of Peat, Marwick, Mitchell?

A Outside?

Q Yes, sir.

MR. VELIE: Your Honor, I am going to object to this question as beyond the scope of direct. The witness has already said he has no personal knowledge of facts. He has summarized entries in papers. He cannot be used as a foil for argument, if that is what this is.

MR. STILLMAN: I don't want to use the gentleman as a foil.

THE COURT: I don't think we need to get any allegations of being a foil, but as to the first part of the objection, I don't think the gentleman is here as a fact witness to that extent. Nothing on direct would suggest to the contrary.

MR. STILLMAN: Let me ask him this, your Honor.

Q In preparing these schedules did you look through the work papers of Peat, Marwick, Mitchell which

the Government has in its possession?

A Yes, sir.

Q You do know, do you not, that amont those work papers is a document which reflects the fact that the schedules were circulated to persons outside Peat, Marwick?

MR. VELIE: Again, your Honor, I object to this. It is argument. If there is a document it can be marked and put in evidence.

THE COURT: That doesn't persuade me. However, there is another problem here.

Do you mean to management types in NSMC? What do you mean by outsiders?

MR. STILLMAN: I mean to management types, I mean to accountants outside --

THE COURT: Then I think we better be a little more specific.

MR. STILLMAN: All right.

THE COURT: Also, Mr. Dingwall, please construe whatever question comes out to mean only if you saw some indication in your file searches to this effect, not something that somebody may have told you.

All right. Reshape it, my dear Mr. Stillman.

MR. STILLMAN: Yes, sir. I will take that item after lunch, your Honor. I don't know if that binder

is here and I don't want to waste thejury's time. I will go beyond it and come back to it later. There is a binder I specifically have in mind and I can't put my hand on it.

THE COURT: All right. Very good.

Q Just one question with respect to this middle version of the master proof. There is some pen on there indicating that that comes out, correct?

A Yes, sir.

Q Or as Mr.Velie would put it, scratched out, is that right?

A I believe those were his words,yes.

Q When you are drafting documents,sir, and you want to change an earlier draft, do you sometimes scratch out the material you had in the earlier draft?

A Yes,sir.

Q Nothing unusual about that, is there?

MR. VELIE: Objection. This witness is summarizing entries. He is not giving expert testimony on how to do drafts.

THE COURT: I would agree.

I think everybody will agree, Mr.Stillman, that people do strikeouts and scratchouts and interlineations, but I don't think this is the witness to get into that with.

MR. STILLMAN: All right, sir.

Q Exhibit 10, which we had before as whatever the number was, are a draft proxy, the August 9 draft, the August 9 draft with Mr. Natelli's handwriting on it, correct?

A Yes, sir.

Q And the last one is the final proxy, is that right?

A That's correct.

Q The middle one, the August 9 draft with Mr. Natelli's handwriting on it, this is one that came to your attention, did it not, from the work papers of Peat, Marwick, Mitchell?

A Yes, sir.

Q That is where you found that one, is that right?

A That's correct.

Q This comes up on some of the others but maybe we can just talk about it for a mirute here. You have the pooled companies and then you have the total, correct?

A Yes,sir.

Q Is there anything wrong with pooling companies?

A No,sir.

Q And companies when pooled are one, are they not, for the bottom line impact of their financial situation at the end of a particular fiscal period?

A Yes, sir.

Q In other words, you put together what was before, add to it what you are pooling it with, and the end of that all, the bottom line of it, is the combination of the two, is that correct?

A Yes, or -- more than two actually in this case.

Q That is right. Here there were three and then four actually that were pooled in, is that right?

A That's right, sir

Q So the bottom line of this combination of the two, for example, for 1968, was net sales of $11,300,000, is that right, sir?

A Yes, sir.

Q And the earnings of the pooled venture, the one, was $756,000, is that also correct?

A That is also correct.

d 11A

Q Now, I would like to look with you, Mr. Dingwall, at GX 65-14.

Of course, we would have to take out these boxes because they don't exactly apply here yet.

What period of time is reflected in those schedules, and could you tell me by the first month and the last month, month and year?

A There are really two periods of time. The first period of time relates to that which was recorded on the company's books for the 18 months. So that would be the perio from September 1, 1967 to August -- I mean, to February 28, 1969.

The numbers on the far left-hand side indicate that.

Q I did that backwards. That would come over there, is that the idea?

A Yes. That reflects the 18 month recording of unbilled accounts receivables.

The other period of time that is mentioned -- perio of time that are mentioned have to do with the May review and the August review of the proxy statement. If I am not understanding your question --

Q No, I am afraid it is me that's not understanding the answer.

A Okay.

Q My notes reflect that you said that this schedule covered an 18 month period. Is that right?

A Well, it covers two different periods. It covers the 18 month period of recording unbilled accounts receivables and it also relates to an audit period where in certain work is done on those unbilled accounts receivables.

Q Pardon me, sir. There is no audit of National Student Marketing, as you understand the word audit, that occurs until the period ended 8-31-69, is that correct?

A That's correct.

MR. VELIE: Wait a minute. No audit at all, Mr. Stillman?

MR. STILLMAN: If you have an objection, why don'tyou just make it and we will let the Judge rule.

MR. VELIE: I am going to move to strike the question and the answer which followed as a simple misstatement of facts in the record. There was an audit in August of '68.

MR. STILLMAN: Of course there was.

THE COURT: One thing at a time. I deny your motion, such as it may be. I am not sure I understand it, but I deny it. Go ahead.

Q Just to clarify this for Mr. Velie, there is an

audit at 8-31-68, is that right?

A That's correct.

Q The next audit of the books of National Student Marketing Corporation occurs at August 31, 1969, is that correct?

A That's also correct.

Q And there is the testimony in the intervening period of these unaudited reviews, some of which is reflected in the proxy binder, Exhibit 13 in evidence, is that also correct?

A Review is a proper word, yes.

Q Yes, review.

Now, if I could just understand this I will be able to move along. In this $3,347,000 figure there are contracts booked after February 1969.

A None are referred to as being -- the answer is you are correct, there is none that are reflected after that date.

Q So far as this refers to write offs then or written off, it refers to contracts booked prior to February 28, 1969 or as of that date?

A It refers to those contracts that were written off up to February 1969.

Q Tell me this: Does this box, the written off box, include the Pontiac contract?

A Yes, it does.

Q What amount of the $2,055,000 does the Pontiac contract represent?

A 908,881.

Q Let's draw another line. 908,881.

A Right.

Q Would you say that the Pontiac matter represented approximately one half of the 2,055,000?

A Approximately a half.

Q That's the same Pontiac commitment, is it not, that the testimony has indicated Mr. Natelli insisted be written off?

A That's correct.

Q So that if I were drawing another schedule I could say written off at insistence of Natelli, isn't that right?

A I think that's a fair statement.

THE COURT: Would you tolerate an interruption here for luncheon, Mr. Stillman?

MR. STILLMAN: I would, your Honor.

THE COURT: Very good.

MR. STILLMAN: Thank you, sir.

THE COURT: Ladies and gentlemen, we will suspend for luncheon and resume at 2:15.

(Luncheon recess.)

2:15 P.M.

(In open court; jury present.)

I A N D I N G W A L L resumed.

CROSS-EXAMINATION (continued)

BY MR. STILLMAN:

Q Mr.Dingwall, just to finish up a point that we were discussing before we got onto Government Exhibit 14, you recall that we were speaking of what I believe is either Government Exhibit 8 or 9, which is the chart that reflects certain pages from the proxy statement, someof which have Mr. Natelli's notations on it?

A That is Exhibit 9.

Q I had asked you whether or not in the course of your work you had come across any document to reflect the fact that the August 9 draft was circulated to various people. Do you recall that?

A I recall that question.

Q I would ike to show you a binder of Peat, Marwick work papers, this one headed "National Student Marketing Corporation miscellaneous data re 5/31/69 proxy," and direct your attention to Page 2289, and ask you whether you recall having seen that in the course of your review work.

A I recall seeing this.

MR. STILLMAN: I would like, Mr.Velie, to offer that page. I show it to you.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr. Dingwall, are you able to tell from examining this Page 2289 which particular draft is referred to when it says "Proofs NSMC filing"?

A No. It simply says "Proofs" at the top.

Q There is one that says something about giving something to Matthews. That is the lawyer of White & Case, if you know, or is it?

A I don't know Mr. Matthews.

Q In any event, Mr. Matthews apparently got one on August 4, but that is a different entry from these others, isn't it, a different part of the page?

A Well, it is certainly not written in straight order, it is over to the side.

Q Can you tell what date anybody else got whatever it is that they got from looking at that piece of paper?

A Well, thenotation here says "I gave this information to Matthews this morning, August 4, 1969."

Q So Matthews got something on August 4. What about these other people? Can youtell what it is that they got and when they got it?

A No, sir, I can't.

MR.VELIE: Your Honor, we obviously don't dispute the authenticity of this document. We stipulated to it. However, it is apparently irrelevant on the subject of who got what and when.

THE COURT: Since I don't understand what it is I am in no position to judge.

I am going to sustain the objection without prejudice, Mr.Stillman, because it is just sort of unmoored, this document. I don't understand what it has to do with the cross-examination of this witness. Since he did not make the entries, as we all can see --

MR. STILLMAN: Absolutely.

THE COURT: -- I see no purpose in receiving it at this point unexplained. However, you may offer it later when you care to.

MR. STILLMAN: Thank you, your Honor.

BY MR. STILLMAN:

Q Mr. Dingwall, I would like to get back to GX65-14, which is this chart. You recall this morning before luncheon you pointed out to us that in this written off box of2,055,000 there is a $908,000 Pontiac writeoff, you recall that?

A Yes, sir.

jhb- 4 Dingwall-cross

Q Is it also not a fact, sir, that included in this 2,055,000 are the Ron Michaels contracts which were written off retroactively?

A Yes,sir, that is correct.

Q They totaled some approximately $748,762?

A That is also correct, sir.

End 1A (Pause.)

Q So that in this box it would have 748,000 Michaels contracts.

Is it also not a fact, sir, that included in that box is the Syntex write off?

Do you have some papers you would like to look at?

A Let me refer to my notes.

Q Please do that. I will just draw the box in case we need it.

A That's correct.

Q That is $122,000?

A Correct, 578.

Q If we put those three together, we have 1.7 million, approximately.

A I would make it to be about $1,780,000.

Q The difference between that, which is the sum of these three items, Michaels, Syntex and Pontiac, we have approximately $300,000 in the written off box in Government's Exhibit 65-14, is that right, sir?

A I am not sure I follow your question.

Q If one subtracted Pontiac, the Michaels contracts and Syntax from 2,055,000 which you have in Government's Exhibit 14, we would be left with approximately $300,000 written off or left in this box, is that right?

A That's correct.

Q Also on this chartyou have this entry that says "Bad" or "tobe written off," correct, sir?

A Yes, that's correct.

Q That amount you take from what?

A Well, these amounts were summarized from Government Exhibit 13.

Q The part of Government's Exhibit 13 to which you refer are the work papers that Mr. Scansaroli prepared in May and the work papers that Oberlander prepared in August of 1969, is that correct?

A That's correct.

Q The words "bad" and "to be written off," also quoted, are words which are actually in those work papers, is that correct?

A That's correct.

Q In addition to these words, specifically referring to Mr. Oberlander's papers, he has other information as well, does he not?

A There is other information portrayed in the work sheets of Mr. Oberlander.

Q So that would it be fair to say that one could call this box comments in work papers by Scansaroli and Oberlander?

A I think that's fair.

Q If we had room on the blackboard we could draw a box and put that in there as well, is that right?

A Yes, sir.

Q I believe that you have told us that the $123,000 is a residual number, as you characterize it, is that right?

A No, sir, I didn't say that.

Q Is 123,000 on this chart a residual number?

A No, it is not.

Q How do you come by the $123,000 in this chart?

A I specifically identified in the papers amounts that had been unchanged from the time that they were recorded.

Q So on this one, as compared with 5, for example, where you had to come up with a residual number, here you were actually able to trace this in certain entries in the work papers themselves, is that the idea?

A That's the idea.

Q I wonder if we could just turn back for a moment to Government's Exhibit 11.

That is one of these charts where you took a portion of the footnote and drew a couple of arrows and put some information on it, is that correct?

A Yes, sir.

Q $748,000 is a gross sales number, is that right?

A Yes, sir.

Q What is the total amount of sales which this company reported as of the time of this financial statement?

A I can't read the number from here, sir. You will have to help me.

Q Would it refresh you if I read to you $11,541,000?

A That seems about correct, yes.

Q Do you know what percentage 748,000 is of 11.5 million?

A Well, I could compute it.

Q Would you say, without putting you to the task of doing that, that it represents less than 10 per cent?

A Yes, sir.

Q I would like to show you chart 12. Chart 12 is another portion of the footnote, correct, sir?

A Yes, sir.

Q This is the thing that brings it to this $21,000 number, is that right?

A I am not sure I follow the question.

Q I am sorry. This chart is the chart by which you take the $209,000 gross profit written off basically from the Michaels contracts, correct?

A Right.

Q That's applied retroactively, right?

A Correct.

Q And at the same time there was this tax credit which was discovered in the amount of $188,000 and the difference between the two was a loss of $21,000 for the 1968 period, is that correct?

A That's the amount calculated there, yes.

Q Can you tell me what percentage the $21,000 is to the earnings of the company?

A Here again I could calculate it.

Q Would it be fair to say that $21,000 is approximately 2.7 per cent of the $773,000 reflected in the statement of earnings for the whole company, NSMC and the pooled companies?

A That seems about right, sir.

Q I would like to show you Government's Exhibit 15.

Government's Exhibit 15 represents, as you pointed out in the lefthand column, a selection of certain clients, certain of the NSMC clients, is that correct?

A That's correct.

Q It does not purport to represent all of the NSMC clients during this period of time, does it?

A No, sir.

Q For example, this particular chart does not reflect Syntex, does it?

A No, it does not.

Q If somebody wanted to add in another client's name, they could put the name Syntex in, is that correct?

A That is not in the context of the chart, sir.

Q I see.

What is the context of the chart?

A The chart simply shows the amounts outstanding as of May 31, 1969.

Q As of May 31, '69. When is it that Syntex gets written off?

A It is written off as of May 31, '69. It is not included in the financial statements at that date.

Q I see.

Because it is written off before June the first, you do not include it in this chart, is that the idea?

MR. VELIE: Objection to the form there; it wasn't written off before June 1st.

Q Taking June 1st as the date after May 31.

MR. VELIE: He said as of.

THE COURT: I'm frank to say I don't understand either one of you. Why don't you put the question again.

Q Do I understand then you would not put Syntex on this chart because Syntex was written off as we have heard as a result of Mr. Scansaroli's conversation with Kurek which took place in August of 1969 and because that wrote it off as of May 31, 1969, you do not include it in this chart, is that correct?

A Well, you have thrown in some conversations there. I'm not clear as to the conversation.

MR. VELIE: I object to the portion of the question

which characterizes or attempts to characterize --

THE COURT: Sustained.

Again, Mr. Stillman, there's been no talk from this witness that he was privy to any conversation. I just think that's not necessary from your viewpoint.

Q Do I understand you do not include Syntex because Syntex was written off as of May 31, 1969?

A That's correct.

Q You include the other items because they were on the books as of May 31, 1969?

A And included in the proxy statement.

Q And included in the proxy statement. All right.

We do know, of course, do we not, that the physical act of writing off Syntex took place during the August 1969 review, is that correct?

A I believe that's correct, yes, sir.

Q Is it also correct that as of the August 1969 review which you have here, we know that the Pontiac contract was written off at or about this time, is that correct?

A Yes, I believe that's correct.

Q And we know that at the same time, approximately the same time that Pontiac was written off, we know that the Eastern was booked and that's this entry that we have put on subsequently to the preparation of the original chart,

is that correct?

A Well, Eastern was always on the chart. Those notations under the August '69 review were added subsequently.

Q We had it over here and we added in the fact that it was on or about August 15, entry by Mr. Oberlander, booking the Eastern contract, isthat correct?

A Well --

Q If I'm not correct, please correct me. I don't mean to in any way takeyou intc an area that you don't want to be. Tell me if I am wrong and I'll try again.

A The Eastern commitment is added to the bottom of the schedule prepared by Mr. Oberlander and that schedule is dated August 15.

Q Isn't that done with an entry that also deals with Pontiac and Syntex?

A They are different entries, but they both appear on that same schedule.

Q Same schedule, precisely.

I wonder if you could do me a favor, please, Mr. Dingwall, and just show me which schedule it is that you referred to.

MR. STILLMAN: So we are looking at page 2683, Mr. Velie, of Government's Exhibit 13.

Q This is among the things that are on here, and

there are many things on here. We have write off Pontiac, 5-31-69, correct?

A That's correct.

Q And there's the Syntex write off over here, is that right?

A That's correct.

Q And then with a blue arrow over here we have this notation by Mr. Oberlander which says, "Take out Pontiac and Syntex to put in Eastern commitment"?

A That is correct.

Q All right.

Insofar as the Eastern is concerned on this schedule that you prepared, the basis for that entry on Chart 15 is the information contained at Page 2683, is that right?

A Yes.

Q All right. You hesitate.

A Well, it is the basis of the entry. I will leave it at that.

Q All right.

In preparing this chart I see you have this entry for Carnation, and you point out on the document prepared either by or attached to the work paper of Mr. Scansaroli the word "delete" and I notice you have these three dashes over here.

Isn't it a fact, sir, that in Mr. Oberlander's notes he reflected the idea that Carnation should perhaps be increased by $15,000?

A Can I see the working paper?

Q Yes, sir.

A Yes, that's correct. That appears on Page 2687.

Q Would it have been permissible then for one to -- again I don't want to write on this chart -- that note could have been put on here as well I suppose, because there is some information with respect to Carnation?

MR. STILLMAN: I will withdraw the question.

Q This entry for comfort letter, just so I understand it, this is the comfort letter that Mr. Kurek testified about,Mr.Johnston testified about, and that is the comfort letter that went to the people from Interstate, is that right?

Is that the same comfort letter?

A When you say "comfort letter," I want to make sure I know what you mean. You mean the final comfort letter that they received?

Q Let's take it in any form that youwant. Let's take it in the form -- the document that is in evidence as testified to by Mr. Schauer, the document which I believe you said you received on October 31, 1969 --

MR. VELIE: Exhibit 33.

Q Exhibit 33 Mr. Velie tells me -- that is the comfort letter I have in mind for the purpose of this question.

This is the comfort letter that I am referring to

Okay?

That comfort letter, to the extent that it takes out some of these contracts containing that information was given to Interstate? Is that right?

MR. STILLMAN: That is a terrible question. I don't even understand it myself, so I will withdraw it.

Q The comfort letter reported the fact that certain of the contracts were deemed by Peat, Marwick to be bad, is that right?

A It may be helpful if you would read me the paragraph of the comfort letter that deals with this.

Q Turning to this page in the document, is that $300,000 the figure which includes the items reflected on the last column of your Government Exhibit 15?

A I am looking here about $300,000.

Q Right.

A Obviously the amounts over there do not tally $300,000.

Q Precisely.

A These are a selection, if you will, of amounts included in the comfort letter.

Q In other words, the left-hand side is a selection so that as you come across to the other side it, too, must represent a selection, is that right?

A That is correct.

Q I wouldlike to now turn back, Mr. Dingwall, if you will, sir, to Exhibit 5, and I believe this will be the last chart that I have any questions about.

The item on Exhibit 5 that reads "no contract or writeoff, $212,000," are these the items that were referred to in Mr.Scansaroli's work papers?

A Yes, they are.

Q Those work papers are bound up in Government Exhibit 13?

A That's correct.

Q You have this item here billed. How did you come up with that figure?

A As I have testified, this represents the amourts included in Government Exhibit 15 as being billed.

Q Do you know, sir, as you stand or appear before the jury today, whether or not that number is accurate?

A Do I know if it is accurate?

Q Yes, sir.

A It is accurate in the sense that it is the amount that is reported inGovernment Exhibit 15.

Q Let me ask you this: Is there any other exhibit whichyou have seenwhich would reflect that the amount is, in fact, greater than the $223,000 you showed there?

A Perhaps if you could state that a little differently.

Q Maybe I can help you.

MR. STILLMAN: May I have Government Exhibit 11, Mr.Velie.

Q Government Exhibit 11 are the journal entries of National Student MarketingCorporation, is that correct, sir

A That is correct, sir.

Q Would you please turn to the journal entries for the month of December 1968 and turn to Sheet 19.

A This book begins in March of '69 and it runs till August of 1969. There are no entries in here for the date that you are asking me about, sir.

MR. STILLMAN: Will you mark this as SCansaroli Exhibit N for identification.

xxx (Defendant Scansaroli Exhibit N was marked for identification.)

MR. STILLMAN: Will you mark this as O.

xxx (Defendant Scansaroli Exhibit O was marked for identification.)

Q Mr. Dingwall, let me show you what I have marked as Scansaroli Exhibits N and O for identification. Would you tell us whether or not you can identify those documents?

A They appear to be Xerox of the special journal en' book of NationalStudent Marketing.

Q Have I misspoken myself or do I understand those are not contained in Exhibit 11?

A They arenot contained in Exhibit 11.

Q To your knowledge, is there some exhibit in evidence which has the originals of those particular journal entries?

A There is nothing in evidence.

Q Is there some binder of journal entries of this company which you have seen that contains the originals of those?

A Yes, sir, there is.

MR. STILLMAN: I would like to offer Exhibits N and O, your Honor. I show them to Mr.Velie.

MR. VELIE: No objection.

(DefendantScansaroli Exhibits N and O were received in evidence.)

Q Mr.Dingwall, would you look at Exhibits N and O, and if you have to refer to any work papers that you prepared in your work preparing Exhibit 5, will you tell us whether or not the $223,000 figure contains the billings reflected on those journal entries for Barnes-Hind as of June 9, 1969.

A The number $223,000 as it appears on Chart 5 does not include an amount billed for Barnes-Hind in the amount of $23,800.

Q Any others?

A There is an amount here for duPont in the amount of $4666 that is not included in that $223,000 number.

Q How much was duPont?

A $4666.

Q Anything else?

A There is an amount for Listerene in the amount of $11,700.

Q Anything else?

A Let me say to you the difficulty I am having is this: There is a lump sum here for Eastern Airlines which I believe has been reflected in the$223,000 item, although I haven't quite pieced it together.

Q I will accept that. Any additional Barnes-Hind?

A Yes,sir. On Stansaroli Exhibit O there is an amount of $41,867 that is not included on Chart 5.

Q Is it fair to say then, Mr. Dingwall, that this chart, Government Exhibit 65-5, should be amended by including billings of about $65,000 Barnes-Hind, $11,000 worth of Listerne -- about another $80,000?

MR. VELIE: I object to the form of that. That is not what the chart purports to show at all.

MR. STILLMAN: I will put it another way, your Honor.

THE COURT: I think you should because "should be amdned" has different meanings to different people.

Q What is the reasonthat you can give us, sir, for the fact that those billings are not included in the $223,000 item on Government Exhibit 65-5?

A It is my memory,sir, that the amounts thatyou have just spoken of for Barnes-Hind were subsequently reversed and that they did not appear -- and they don't appear on that schedule.It is possible that the preparer of the schedule Government Exhibit 15 had that in mind when he prepared it.

Q In other words, what you did was to take the information on Government Exhibit 15 and you did not have in front of youScansaroli Exhibits N and O in evidence, is that right?

A Did not have it in front of me?

Q Yes.

A That's correct.

Q I wonder if you could just do me a favor and look atExhibit 13, turn to Page 2618, and tell us whether or not there are any entries in that set of work papers that bears upon the Barnes-Hind billings.

A Yes, there are.

Q What is the page that you are looking at?

A Page 2618.

Q Is that a page of some journal entries?

A Yes, it is.

Q Does that reflect any information with respect

to Barnes-Hind?

A It does.

Q What information does it reflect?

A It reflects that41,867 of Barnes-Hind had been billed and 23,800 of Barnes-Hind had been billed.

Q What is the date of that schedule?

A May 22, 1969.

Q Do you feel that that information should somehow be reflected on Government Exhibit 65-5?

A Well, the chart was prepared in the fashion that it was. As to being amended for theseBarnes-Hind billings, as I stated to you earlier, it is my recollection that these bills were reversed.

Q When was that?

A I would have to refer to my notes, sir.

Q Wouldyou look at your notes so that we can clear this up?

A Surely.

Q See whether or not they were reversed as of the date this chart speaks.

A Journal entry 272 made in March of 1969 reverses the $41,000 that you have up there as being billed to Barnes-Hind.

Q How about the 23,800?

A That appears to be another amount.

Q It is still there. These other two amounts, did you see any entry reversing those?

A I am not aware of any, no, sir.

Q Putting these numbers together, you put them together based on your analysis of the exhibits, working to the best of your ability, is that right, sir?

A That's a fair statement.

Q You were putting together charts which you and Mr. Velie had discussed which you wanted to present to the jury to support some position of the Government in this lawsuit, is that right?

A That's correct.

MR. STILLMAN: I have nothing further, your Honor. Thank you.

THE COURT: Do you have anything, Mr. Martin.

MR. MARTIN: I do, your Honor.

xx CROSS EXAMINATION

BY MR. MARTIN:

Q Mr. Dingwall, does this chart which you prepared on the unbilled receivable status as of June 1968 receivables any place disclose that an amount equal to 10 per cent of the billed items has been excluded by you from that chart?

A I am afraid I don't follow the question.

Q Very simply, you just told Mr. Stillman that there are $23,800 of Barnes-Hind commitments that was billed as reflected in Government's Exhibit 13.

My question to you, sir, does your chart disclose that there was an additional amount in excess of 10 per cent of the amount you have down here as billed that was in fact billed as reflected in Government's Exhibits to which your chart refers?

A That appears to be the case.

Q Indeed, there is another $15,000 that was billed that is not disclosed in your chart, isn't that correct?

A Well, I think you have to bear in mind the way in which the chart was prepared.

Q Am I correct or not that your chart does not disclose an additional $15,000 that was billed?

A That's correct.

MR. MARTIN: Can I have Government's Exhibit 5, please.

Q This chart shows the earnings of National Student Marketing reported to its shareholders in this exhibit, Government's Exhibit 5, is that correct?

A That's correct.

Q That was the 12-month period showing earnings of

$388,031, is that correct?

A Correct.

Q That was not the only report that the shareholders of National Student Marketing received in 1968, was it?

A Say that again.

Q That was not the only report as to earnings that the National Student Marketing shareholders received in 1968, was it?

A I believe that there --

Q Let me make it easier for you. Didn't they receive a report of their earnings of their company for the nine-months ended 5-31-68?

A I know a flyer was prepared.

Q It is in evidence, isn't it?

A That's correct, it is in evidence.

Q That report to the shareholders of National Student Marketing showed earnings of $288,000, isn't that correct?

A You would have to refresh my memory.

Q Happy to do it.

MR. MARTIN: 46A please.

A The nine-months earnings as stated here in the May 31, 1968 flyer is 288,390.

Q What is that flyer, as you call it, entitled?

A Sir?

Q What was the figure?

A 288,390.

Q You call that a flyer. What is its title?

A "Financial report nine-months 1967-68."

Q So in the financial report that National Student Marketing issued for the period 5-31-68 they had reported earnings of $288,390?

A That's correct.

Q Would you agree that that is roughly three quarters of the amount they reported for the full year?

A Roughly speaking, yes.

Q Did you do any chart to show what percentage of that income related from the inclusion in that report of unbilled receivables on contracts in progress?

A No, sir, I prepared no such chart.

Q Isn't it a fact that more than half of those earnings, sir, came from unbilled receivables on contracts in progress, that 288,000 figure?

A I really just don't know.

Q Are you familiar with exhibits C1, which was received, Defendant Natelli Exhibit C1, during the cross examination of Mr. Kurek?

A I have seen that document but I just don't recall the numbers on it, sir.

Q I show it to you and ask you if that refreshes your recollection that over $145,000 as a profit reported to the shareholders before Peat, Marwick, Mitchell ever became associated with that company was proffered on unbilled receivables on contracts in progress?

A You say profit?

Q Is there an item of cost on there?

A The $149,000 is a gross revenue number. I don't know what the gross profit is on those billings -- excuse me --on those unbilled accounts receivable.

Second of all, there is a tax amount one would have to compute to determine what the effect on profits would be, and I simply don't have those numbers in front of me.

Q Wasn't the amount of the unbilled receivables $260,000 and wasn't that Mr. Kurek's testimony?

A I don't recall Mr. Kurek's testimony that that was the amount of the unbilled receivables.

Q Does that document reflect cost on those of $113,000?

MR. VELIE: This is argumentative. If there's a document that's in evidence --

MR. MARTIN: We are supposed to have charts on documents in evidence.

THE COURT: Let's go on to something else.

MR. VELIE: May we have that remark stricken?

THE COURT: The jury will disregard it.

Anything else?

MR. MARTIN: Yes, your Honor.

Q This chart is Government's Exhibit 65-5, is that correct?

A That's correct.

Q That is based, is it not, in part on Government's Exhibit 15, which was Mr. Kurek's schedule, is that correct?

A Yes, sir.

Q That was a schedule that was discussed according to the testimony, at this finance committee meeting of June 9, 1969, is that correct?

A That's correct.

Q Now, do you recall in the minutes of those finance committee meetings which are in evidence, Mr. Randall stated in that meeting: "Probably, we started out the year with certain contract rules, verbal and written. All the written agreements have been fulfilled and none have had to be written off."

Do you recall that, sir?

A I do recall -- I don't recall that being read in the record frankly.

MR. VELIE: Are you reading from something?

MR. MARTIN: A document in evidence, Government's Exhibit 16.

There's no dispute that's in there, Mr. Velie?

Q Did you prepare any analysis of Exhibit 15, Mr. Dingwall, to determine whether or not that statement was true as to what the experience was with written contracts as opposed to verbal contracts?

A What statements? I didn't get all of the statement which you were reading.

Q "All the written agreements have been fulfilled and none have had to be written off."

A Okay. I'm with you. What's the question?

Q Did you prepare a chart that would show what the

relationship was of the written unbilled receivables that were on the books of National Student Marketing as of the date of this meeting, June 9, and whether any of them had had to be written off and what percentage of them were billed?

A That's precisely what Government's Exhibit 15 is, sir.

Q Does that deal solely with the written contracts?

A Exhibit 15 or this contract?

Q This chart?

A That chart deals with all contracts.

Q Have you looked at Exhibit 15 to determine that that reflects whether any written contract making up any of the unbilled receivables was indicated on that contract as written off?

A Here again Exhibit 15 clearly spells out whether or not a contract is written or if it is verbal. It also states whether or not that amount was billed, written off or remains on the books untouched.

Q That is an exhibit which you examined carefully, isn't it?

A Absolutely.

Q Isn't it the fact, sir, that that exhibit shows that none of the written commitments had been written off as of that date, June 9, 1969?

MR. VELIE: Why don't you show him the exhibit.

(Pause.)

MR. VELIE: Do you have a copy of Exhibit 15?

A It shows quite the contrary, sir.

Q What written commitment was written off according to Government Exhibit 15?

A Well, are your questions withrespect to the 1968 reported contracts?

Q Let's limit ourselves to that now or the 19 -- take them all, 1968 or 1969, written off as of June 9, 1969.

A It appears as though you are correct. The amount is indicated on here as being contracts are not indicated as being written off.

Q With the exception of the Pontiac commitment of approximately nine hundred some odd thousand dollars, which is contained on that exhibit, isn't it a fact, sir, that the total of the written contracts comes to something in the neighborhood of $600,000?

MR. VELIE: Are you looking at Page 7, Mr. Martin?

MR. MARTIN: I believe it appears on Page 7.

Q Maybe I could help you.

MR. VELIE: It is in evidence.

A What is your question?

Q That there were approximately 550,000 of written commitments reflected in that schedule, isn't that correct?

A That appears to be the case.

Q Can you by running down the first three pages quickly or --

MR. MARTIN: Mr.Velie, if I tell you I have done this, would you agree --

MR. VELIE: It is in evidence. Why don't you read it out loud.

MR. MARTIN: -- roughly half of those were billed as of June 9, 1969?

(Pause.)

A What is your question?

Q Can you tell us by looking at Exhibit 15 of the $515,000 in written commitments, what is the amount of those commitments that had been billed as of June 9, 1969?

A Your question relates to the '68 or '69?

Q All of them.

MR. VELIE: This chart, however, relates to 1968 contracts.

MR. MARTIN: I am asking him a question under a different set of circumstances.

MR. VELIE: Very well.

THE COURT: While you are figuring that up, Mr. Dingwall, ladies and gentlemen, we will take the afternoon recess at this point.

(Recess.)

d 4B

(In open court; jury present.)

THE COURT: We have an unanswered question.

BY MR. MARTIN:

Q Mr. Dingwall, have you been able to total up the amount of the written commitments reflected in Government Exhibit 15 which had been billed as of the June 9th meeting?

A Yes, I have.

Q What is that, sir?

A That totals 339,747.

Q So that if we wanted to prepare a chart of simply the written commitments and what the history had been with written commitments up to June 9, 1969, we would have a chart, would we not, sir, that would indicate about roughly half a billion dollars, half residual, to use your term, and none written off, isn't that right?

A Based on Government Exhibit 15 alone, that is the way your chart would look.

Q That is also excluding the Pontiac commitment, isn't that right, because the Pontiac commitment is reflected on Government Exhibit 15 and I asked you to exclude that from your calculation?

A Well, I would have anyway.

Q Is it fair to say, Mr. Dingwall, that Government Exhibit 65-8, this chart, is not an exact duplicate of

what appears in the proxy statement?

A If by that -- what do you mean by that?

Q I mean this is only a portion of the page in the proxy statement, isn't that right?

MR. VELIE: That is not from the proxy statement at all. That is from the annual report.

MR. MARTIN: I am sorry.

Q This one that is from the proxy.

A It only portrays the 1968 numbers.

Q And there was right next to this August 31, 1968 column a column entitled "May 31, 1968 unaudited," isn't that correct?

A That is correct.

Q That had a figure in it for the amount of unbilled receivables on National Student Marketing's books as of May 31, 1968, isn't that correct?

A That is correct.

Q That was a figure of $1,934,109, right?

A You would have to give me the document.

Q I will give youthe document.

A That is correct.

Q Financial statements of any company, Mr. Dingwall, have two parts, do they not, one --

MR. VELIE: Excuse me. What page are you looking

at?

MR. MARTIN: He has the page.

I don't know.

MR. VELIE: Excuse me, Mr. Martin.

That says May 31, 1969, doesn't it?

MR. MARTIN: Oh, yes. I am sorry. Thank you.

That is what I meant to put up.

THE WITNESS: I am not sure what the question is, sir.

d 5A

Q Any set of financial statements of a company basically has two parts, does it not, one that is called a statement of earnings, sometimes referred to as a P & L, and the other a balance sheet, showing the assets and liabilities of the company, is that right?

A Well, it is fair to say that a set of financial statements includes those documents as well as others.

Q In the financial statements for August 31, 1968 which are Government's Exhibit 5, the item of unbilled receivables and contracts in progress is disclosed in connection with the presentation of the balance sheet, is that not correct?

A I am not sure I know what the question is.

Q In the August 31, 1968 financial statements --

A Yes, sir.

Q --the reader of those financial statements will find out about this unbilled receivable or contract in progress by looking at the balance sheet, as part of the balance sheet items.

A Well, the asset amount and the liability amount is included in the balance sheet.

Q On the P & L statement, the profit and loss statement of earnings, there is no breaking out of the unbilled receivables, there are only gross figures for sales of servic

and sales of product, isn't that correct?

A My answer related not only to the accrual of the asset, the sales, my answer also related to the accrual of the costs, the liability. The consolidated statement of earnings contains an amount for net sales of services, an amount which represents the cost of sales of services.

Q But insofar as the reader of those financial statements would get information that part of the sales reflected there are based on percentage of completion accounting on unbilled receivables, that all comes out in the balance sheet, isn't that correct? Although the figures are included in a gross sales figure, the only time you get to talk about unbilled receivables and contracts in progress is on the balance sheet?

A Well, forgiveme, but they are one and the same. I don't know the point you are driving at, sir.

Q Simply, I am talking about where is it disclosed in the '68 financial statements that there is this use of percentage of completiong accounting, the use of this asset unbilled receivable? Is it in the P & L statement or the balance sheet? The disclosure is all I am talking about, sir.

A If you are asking the matter of disclosure, those numbers appear in the balance sheet and they are referred to

in note 3, there is no way you can look at the balance sheet and determine the method of accounting that is being used. It refers you to note 3.

Note 3 discusses what contract in progress accounting is about and that is where the reader would look to see how these financial statements are prepared.

Q He would find unbilled receivables in the balance sheet and he would find that note as a note to the balance sheet, isn't that correct?

A That's the way that it's been prepared here, yes.

Q We have heard testimony that that 1968 financial statement was given to people, Mr. Frommer, I believe so testified, and you were here when he testified, weren't you?

A I was here when Mr. Frommer testified.

Q Looking at the proxy statement, do you have that in front of you, Exhibit 25?

A I have it in front of me.

Q Where in the proxy statement is the item unbilled receiable treated? Is it set forth on the balance sheet, am I not correct?

A It is set forth as a number in the balance sheet.

Q And the profit and loss statement which appears on Exhibit 25 simply talks in terms of net sales, services and sales of product, isn't that correct?

A Those two items are set forth there, yes.

Q And there is no breakdown of the sales into sales on completed contracts or sales on percentage of completion, isn't that correct? I'm talking simply about how it is broken out on the profit and loss statement.

A Okay, then my answer would be yes.

Q And in the proxy if you were going to look for unbilled receivables, you would find them also on the balance sheet the same place you found them in the '68 report, isn't

that correct?

A They are included in the balance sheet.

Q This chart that you have prepared shows, does it not, that somebody who had Exhibit 5 and looked there at unbilled receivables would see that the original report reported $1,763,992 as unbilled receivables for the period ending August 31, 1968?

A Correct.

Q If he also had the proxy he would see that in the proxy for that same period, August 31, 1968, the unbilled receivables being reported at the time the proxy was printed had been written down to $1,015,230; isn't that correct?

A Well, you say written down. There is a new amount that appears there. I don't know what you conclude.

Q It would reflect, would it not, sir, that what you are reporting for August 31, 1968 in the proxy is 700 some odd thousand dollars less than you had originally reported for that category, isn't that correct?

A That's correct. The amounts are changed.

Q And it wouldn't reduce that figure, as Mr. Velie mistakenly thought the other day, simply that those receivables had been billed or collected because you are reflecting the condition at the end of a period, is that correct?

A The amount shown in the balance sheet represents

the amounts of the unbilled accounts receivable at the point in time that is reported.

Q We are reporting --

MR. VELIE: Excuse me, Mr. Martin, the witness has not finished his answer.

MR. MARTIN: I thought he was.

A I am afraid that really is my answer. It shows the amounts of the unbilled receivables as of August 31, 1968.

Q So a reader of the documents would know that in November when the original report was prepared they had shown unbilled receivables as of 8-31-1968 of a million, seven some odd and when they were showing the balance sheet for the same period in August 1969 they were showing only roughly one million, isn't that correct?

MR. VELIE: I object to what some reader would know. There's obviously no disclosure. We can't tell what the reader would know.

THE COURT: I would think that the point is well taken as to form. I don't see how we can ask Mr. Dingwall to speak for any reader. I don't know that that's quite appropriate.

Q Both balance sheets speak of the same day, is that correct?

A They do.

Q You have told us that you have been able by going back to the work papers, to check and determine that the difference in these two numbers results from the write off of four different contracts, isn't that correct?

A That is correct.

Q And those were the four Michaels contracts?

A I believe that's correct, too, yes.

Q And you know there's been testimony that there are - you reviewed three separate entries in Government's Exhibit 13 which resulted in those changes, isn't that correct?

A That's correct.

Q And in one of those was an entry Listerine contract, which was made on the line that followed an entry to retained earnings, isn't that correct?

A Well --

Q Do you have the document in front of you?

A The entry writing off the Listerine contract is entry 5. It appears on page 2532. There is no entry of retained earnings at all.

Q What is the entry on that?

A Well, there is a debit to accrued cost a debit to revenue, a credit to cost of sales and a credit to unbilled receivables.

Q A debit to revenue, is that correct?

A That's correct.

Q That is to reduce revenue for the particular period, is that right?

A In the amount of $70,200.

Q The other two entries that you referred to deal with theother contracts, is that correct?

A Yes,that is correct.

Q Despite the difference in those three entries, is it also correct that all of those ultimately got treated the same way when it came to preparing the balance sheet for the period ending August 31, 1968?

A They were all subtracted from the balance sheet.

Q They were all subtracted from unbilled receivables?

A That is correct.

Q And they were all subtracted, were they not, also,sir, from the accrued cost?

A Yes,that's correct.

Q Is it a fact, sir, that if you look at the profit

and loss side of that, the full amount of those writeoffs, that 748,000-some odd was also subtracted from the sales figure that appeared in sales as of August 31, 1968?

A $748,000 was subtracted from August of '68 sales.

Q And the accrued cost was subtracted from cost of sales, isn't that correct?

A That is also correct.

Q And there is an item here in the entries that you have referred to for deferred taxes, isn't that correct?

A Yes, that is correct.

Q And that item also appears on the profit and loss statement, does it not, sir, the 188,750?

A Yes, it does.

Q As a reduction of a deferred tax provision as a result of a net operating loss carried forward, is that correct?

A That is the description.

Q So the results of the entries that were made were to reduce sales by 750,000 roughly, is that correct?

A Yes.

Q To reduce accruedcost by roughly $540,000?

A Yes.

Q The effect of that is to reduce revenue by approximately $210,000, isn't that correct?

A Yes, sir.

Q That is the reduction side?

A That is correct.

Q Then there is an entry here which decrees an expense item, that is taxes, so it increases revenue by $ 188,750, isn't that correct?

A That's correct.

Q So that the net effect of all of these changes made to the August 31, 1968 statement was to reduce the profit by $21,000, is that correct?

A That is the dollar amount of the change.

Q And that is all reflected in the numbers that are published for the consolidated statement of earnings for the year ended August 31, 1968, in the proxy statement. isn't that correct?

MR. VELIE: I object to the form of the question, reflected in the numbers. There is no disclosure here --

THE COURT: There are several ways in which the question is too broad and too questionable. I don't understand what you mean by the numbers.

The report is full of numbers.

Reshape it.

Q They are all reflected on the statement of earnings for the period ended August 31, 1968?

gab-4 Dingwall-cross

A All those changes are made to the August 31, 1968 statement of earnings, that is correct.

Q And then the sales that you referred to as having been written off in Government Exhibit 13, they reduced, did they not, sir, the nine-month sales also reported in the proxy?

A Say that again, sir.

Q The sales that you said you found written off in the Peat, Marwick work papers as to current sales, those served to reduce the sales that were actually reported in the proxy for the period ending May 3, 1969, isn't that correct?

A The other amounts that I found, yes.

Q So there was a reduction of sales for the period May 31, 1969, correct?

A As the result of those writeoffs.

Q And that reduced the revenue?

A That is correct.

Q And there was some accrued costs with those also?

A Agreed.

THE COURT: Anything else?

MR. MARTIN: Not too much further, your Honor. There is just one other area that I wanted to go into.

End 6B

Q Out of one footnote you made several charts. I would like to talk to you about this one here, this not disclosed entry.

This was all one footnote, right, sir, you have broken it up here?

A That's correct.

THE COURT: So the record is clear, you are referring to --

MR. VELIE: 11 and 12, your Honor.

THE COURT: 11 and 12 of the GX65 series.

Q Is that correct?

A That's correct.

Q What this footnote had in it was net sales, then originally reported, then pooled companies reported retroactively, then per statement of earnings, and that dealt not only with 1968 but with 1966 and 1967, isn't that correct?

MR. VELIE: Objection to the form.

Q Did not that footnote refer to 1966 and 1967 as well as 1968?

A You are talking about the final footnote in the final proxy statement? It does contain the year '66, '67, '68.

Q That is a footnote, is it not, sir, that is

designed to give the reader of the proxy statement some idea of the trend of earnings of the company over a period of its history, isn't that correct?

MR. VELIE: I object to asking a question in that form of this witness. He didn't write that footnote.

THE COURT: I know, but this is a common garden variety-type of thing in that sense that he is asking.

Do you really mean over its entire history?

MR. MARTIN: No, not for the entire history, but for a period of years.

THE COURT: All right. Do you get the drift of his question?

THE WITNESS: I get the drift of his question, but if I wanted to get a feeling for how this company was doing, I would not look at a footnote. I would look at the income statement.

Q You would look at the income statement?

MR. MARTIN: Thank you very much. No further questions.

THE COURT: Mr.Velie, do you have any redirect?

MR. VELIE: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. VELIE:

Q The income statement does not disclose anywhere,

does it, how the company did in 1968, is that correct?

A I am sorry. I don't understand your question.

Q The income statement itself is consolidated, so that it doesn't show you what the company actually did last year, in 1968, does it?

MR. MARTIN: Objection, your Honor.

THE COURT: The income statement itself --

Q The income statement by itself, without the footnote, is a consolidated income statement, isn't it?

A Yes.

MR. MARTIN: You only have one company, your Honor.

THE COURT: Just a moment. Are we talking now about the proxy statement?

MR. VELIE: Yes.

THE COURT: Help Mr. Dingwall out a little bit. What are you dealing with?

Q The income statement in the proxy statement, Mr. Dingwall, that is a consolidated statement and it shows the company the way it would have looked if certain additions had been made retroactively, is that correct?

A That is correct.

MR. MARTIN: Objection.

A We call --

THE COURT: Go ahead.

A We call that a pro forma statement.

Q So that if you actually wanted to have a look at that proxy statement and see did the company make money last year, one of the things you would have to do would be to look at this particular footnote and take out the pooled companies and see what last year was like, isn't that correct?

MR. MARTIN: Objection, your Honor.

MR. VELIE: It is directly relevant to what you asked.

THE COURT: Perhaps so, but I think the objection is well-taken because you are putting words in the witness' mouth and Ian Dingwall does not need that from any of us I don't think. You ask him what you want to know and he will tell you.

Q This footnote says, doesn't it, net sales and earnings as originally reported to stockholders in the annual reports for the year 1967, 1968 and original prospectus for the year 1966 and the amounts as shown in the statements in this proxy statement are reconciled as follows.

A That is a correct reading.

Q What does reconciled mean?

MR. MARTIN: Objection.

Q What does reconciled mean?

MR. MARTIN: Objection.

THE COURT: Look, Mr.Velie, I don't think we have to put upon Mr. Dingwall to give us translations of these words. You must have something else in mind.

Q With respect to the very question and answer Mr. Martin asked you about where you would look as to the company's performance if you wanted to find out how it did last year historically, would you look in this footnote?

MR. MARTIN: Objection.

THE COURT: I think he has already answered it once for Mr. Martin, but I will allow it again.

A Well, in order for a reader to be informed about a financial statement in the company's history obviously they would read the whole document, not just the income statement, the footnotes that relate thereto.

These notes are flagged in the earnings statement and really as far as I am concerned are just the same -- they are a part of the income statement.

Q Mr. Martin was asking you a lot of question about the fact that certain numbers have been reduced, switched around, or whatever, in the proxy statement from the way that they were previously reported.

MR. MARTIN: Objection to the form of the question

THE COURT: Yes. I don't really think you have to wind up. Just deliver.

Q I show you Chart No. 8. There has been, has there not, changes in the numbers reflected in the proxy statement from the way it was originally, is that correct?

A That's correct.

Q Is that what you call a prior period adjustment?

A That has the smackings of a prior period adjustment.

Q That is what it is, isn't it?

A Well, that is the kind of thing that one would do,yes. You would make a subtraction of the balance sheet, but it doesn't stop there.

Q My question to you is, first of all, if you had all of these exhibits and work papers we have been looking at for two weeks you could figure out what happened to the $748,000 of the shareholders' assets, couldn't you?

A You could and I did.

Q You could and you did. In fact you spent several weeks working on this, didn't you?

A Months.

Q Can the reader of the proxy statement himself from what is in that proxy statement tell what happened to three-quarters of a million dollars of the shareholders'

assets?

A There is absolutely no way.

Q You started to say that reducing the numbers --

MR.MARTIN: I am going to object to the form of the question already, your Honor.

THE COURT: I don't even hear. I heard "You started."

MR. VELIE: I got cut off.

THE COURT: I think we have to let him go a little further, if you don't mind, Mr. Martin.

7A

Q Mr. Dingwall, you were telling us that changes in last year's numbers are a portion of a prior period restatement, isn't that correct?

A That's correct.

Q In fact, there are very strick requirements in the account provisions as to how to carry out a proper prior period adjustment, aren't there?

A Yes, indeed.

MR. MARTIN: Objection.

Q They are found, are they not --

MR. MARTIN: Objection, your Honor.

THE COURT: I will allow that.

Q They are found, are they not, in accounting principles number 9, aren't they?

A They are indeed.

Q They are binding on accountants, are they not?

A Absolutely.

Q They define what is generally accepted accounting principles, is that correct?

A They do.

Q Are you permitted to make a prior period adjustment without disclosing the fact that you have done that?

A Indeed not.

Q It says right in a PBN 9 that you must disclose,

doesn't it?

A Yes, it does.

Q Let me ask you something else about APB no. 9. You have seen in chart number 12 that a $210,000 gross profit write off has been netted or added together with a $188,750 tax credit from an operating loss carry forward. The net is a minus $21,000 number.

My first question to you, sir, is is it not required by APB No. 9 that you disclose each and every component of a prior period adjustment such as this and that you are not permitted to net them privately in your accounting office and not disclose whatyou have done?

A APB No. 9 is quite clear. It says when you make a prior period adjustment you state the effect of that prior period adjustment on the components of the earnings statement as well as other places. It also says that one does not net extraordinary items.

Q The 188,750, that is an extraordinary item, isn't it?

A Yes, it is.

Q Would you say then that this procedure of netting together is not in conformity with generally accepted accounting principles?

A I would indeed say that.

Q Would you say then that the non-disclosure of $1 million of 1968 contracts written off, of which three quarters of a million dollars is the prior period adjustment, non-disclosure of that is not in conformity with generally accepted accounting principles?

A I would indeed.

Q You would?

A Specifically, the standards of reporting.

Q You remember when Mr. Stillman was asking you questions about chart number 5 he had a box up here and it said Barnes-Hind, there was a number of 23,800, a number of 51,000 some odd, which Mr. Stillman was asking you whether or not those were in fact billed.

He also had a number up here in a box that said Listerine in the amount of 11,700 and a box over here that said DuPont in the amount of 4,666.

First of all, the $41,000 turned out not to have been after all, is that correct, so that got stricken out.

A There were entries made to bill that and those entries were reversed.

Q So that it wasn't really billed after all according to the company's books?

A According to the company's books.

Q This Listerine contract, do you know if that was

a 1968 contract, spoken about by this chart, or whether it was a 1969 contract booked in November, in the first quarter of 1969, and therefore has no place in this chart?

A That Listerine contract is a '69 contract.

Q So you don't have to record that on the 1968 chart either?

A No, you don't.

Q DuPont in the amount of 4,666, that is a 1969 contract also, isn't it, if you know?

A I don't really know, sir.

Q Why don't you just take a look at this yourself and see if on the bottom there of the first page you can find an entry there indicating the DuPont item there as '69 or '68.

A I believe that 4,666 had number correspondence to a '69 contract that was recorded after August '68.

Q So Mr. Kurek, who prepared Government's Exhibit 15, erred, did he not, in reporting to Mr. Natelli in Government's Exhibit 15 by the amount of about $24,000, is that correct?

MR. MARTIN: Object to the characterization, your Honor. There is no evidence other than that that schedule was at the meeting.

THE COURT: Yes.

MR. VELIE: Mr. Kurek said he prepared it.

THE COURT: I know, but the point still remains for a few other reasons. I don't think that is a fair way of questioning your own witness, Mr. Dingwall.

MR. VELIE: Very well. I will put it this way.

THE COURT: Rephrase it.

Q First of all, Exhibit 15 was picked, was it not, simply because that is an amount reported to one of the defendants, is that correct?

A That's correct.

Q My next question is to the extent that Exhibit 15 differs from the companies internal books, which the defendants may or may not have seen, it differs in that $23,000 or a little over what is 2 per cent of the total instead of being inactive should be in billed, is that right?

MR. STILLMAN: I must say I have trouble understanding the question. I don't know if the witness does.

Q In other words, the effect of this change is to take 23,000 out of inactive and put it in the billed, is that right?

A My only problem is 2 per cent of 4 per cent.

Q So the exchange is off by about 4 per cent, is that right?

A That's about right.

Q Mr. Martin was asking you about whether or not you

made a chart showing the written contracts apart from Pontiac reported in Exhibit 15. That was about $300,000, wasn't it, worth of those contracts? Am I right, do you recall?

A I don't know if you are talking about --

Q Is it fair to say it is about $337,000 the contracts reported in Exhibit 15 were written?

A No, I don't think that's a truthful statement.

MR. MARTIN: I am sorry, that's the amount that was billed on the written contracts.

Q What is the amount of the written ones.

A The schedule indicates approximately $550,000.

THE COURT: Again, do you mind starting over again so we can rid ourselves of this confusion.

Q We would have a chart that shows $550,000 -- I have that about to scale, don't I -- about a third of the total being written, and of the third of the total that is written more than half, or $337,000 has been billed, is that correct? That's what you and Mr. Martin were talking about?

A Well, be mindful of this: The $550,000 relates to '68 as well as '69 contracts.

Q I see. These aren't even all 68's and therefore it is not comparable to this?

A No.

Q How much of the 550,000 are 68's, if you know?

A I don't know at this point.

Q It is less than that then, is that the idea?

A Yes, sir.

Q So itwould be a much smaller kind of a chart?

A Right.

THE COURT: Anything else?

MR. VELIE: Yes, your Honor.

THE COURT: Mr. Velie, if this is going to take a bit, I have some other cases waiting.

MR. VELIE: Your Honor, it will only take a minute or two, I believe.

THE COURT: All right.

MR. MARTIN: We will have some more, Judge.

THE COURT: Yes, I appreciate that. Let's go.

Q This is chart number 10 also in evidence as 17B. Mr. Dingwall, is it within generally accepted accounting principles or is it not within generally accepted accounting principles to subtract one company's losses from other companies?

THE COURT: Wait a minute. The defense hasn't objected. I don't recall them getting into this on cross.

MR. VELIE: Your Honor, I direct the witness' attention and the Court's attention to the question which indicated that the number for the statement of earnings appeared to be a proper arithmetic total of certain numbers here?

THE COURT: Yes.

Q My question now is, is it proper to take the core company's losses and subtract them from companies that it didn't even own when it sustained those losses?

MR. STILLMAN: I object to the form of the question.

A You can't do that.

THE COURT: Just a moment.

Are you referring to the pooled companies business?

MR. VELIE: I'm asking whether it is appropriate --

THE COURT: No. You understand my question, don't you?

MR. VELIE: Yes, your Honor. I'm referring both to the pooled companies and to National Student Marketing.

THE COURT: Why don't you just put it that way because we are just -- I don't understand you from your own point of view.

We are dealing with an exhibit that the jury has seen several times, the Judge has seen several times. From your own adversarial point of view, let's deal with what we are dealing with there in the way of entries.

Q You have testified to your calculations, three-quarters of a million dollars of National Student Marketing's losses were subtracted from the pooled companies line?

A That is correct.

Q My question is, from an accounting point of view, is that proper or improper?

A It is improper.

MR. VELIE: Nothing further.

MR. STILLMAN: I am going to be a bit, your Honor.

THE COURT: If you are going to be a while, I think we better wait until tomorrow.

Ladies and gentlemen, as you know tomorrow is Election Day. If you will return at 11:00 o'clock, I hope that we will be able to proceed with dispatch then.

The Government, I believe, will concede that this is their last witness, isn't that so?

MR. VELIE: This is our last witness, yes, your Honor.

THE COURT: Fine. So that you can get an idea that we didn't quite make our estimate of last Friday, but we are close.

Also once again let me remind you of two things.

First of all, though the Government is close to concluding, that doesn't necessarily mean that the case is over yet. We may hear more.

Second of all, I want to repeat my warning posed to all of you a number of times, and that is if you should see anything in a newspaper or hear of anything on the radio or TV about this case, please ignore it if you can.

All right, see you tomorrow at 11:00 o'clock.

(Jury absent.)

THE COURT: Gentlemen, I would like to see you tomorrow morning at 10:30 here in court to take up certain legal matters which I don't think I need to expatiate on.

MR. MARTIN: Fine, your Honor.

(Adjourned to Tuesday, November 5, 1974, at 10:30 A.M.)

UNITED STATES OF AMERICA

vs. 74 Cr. 43

ANTHONY M. NATELLI and
JOSEPH SCANSAROLI

November 5, 1974
10:30 a.m.

(In open court, jury absent.)

THE COURT: Good morning.

Mr. Martin, Mr. Stillman, and Mr. Velie, I of course obviously had in mind, though we haven't quite finished, there's a round of recross apparently of Mr. Dingwall -- we ought to get out of the way the motions at the end of the Government's case.

Mr. Martin, I have read your brief for which I thank you. Do you want to place on the record your position succinctly?

MR. MARTIN: I will, your Honor.

Your Honor, at this time the defendant Natelli moves to dismiss count 2, the only count of this indictment in which he is named, on the ground that the Government has not established a case sufficient to go to the jury.

It seems to me, your Honor, the first thing is, this is a case of fraud ~~which is nothing wrong doing~~ where there is no wrong doing. There is no evidence in this record that would allow a jury to conclude beyond a reasonable doubt that Mr. Natelli consciously

performed an act that he knew to be wrong at the time. Indeed, the only evidence that deals with his state of mind are two incidents that occurred in October, one in which he suggested this matter be brought to the SEC at the time the comfort letter was issued, and second, when he --

THE COURT: Wait a minute. You rely on that. That's only in the record eliptically at best.

Let me say, though, there is other evidence perhaps even better than that pointing in favor of Natelli, there is certainly ample evidence from which a reasonable jury could infer that there was a scheme to defraud, as alleged in count 2, and that Natelli was a knowing and purposeful member thereof.

I speak mainly to the documents which he participated in without more.

I'm not saying that that's necessarily what the fact finder will determine, but that's not my job at this point. My job is assessing the evidence.

I think there's documentary evidence from which a reasonable jury could infer an intention by him to participate in a fraud substantially as alleged in count two.

If I were the fact finder, you might convince me that isn't so as a matter beyond a reasonable doubt, but, again, the test is somewhat different at this stage.

MR. MARTIN: Without belaboring the point, I do want the record to be clear that I feel that the Government has not established, A, that he had knowledge, B, that the items allegedly not disclosed in paragraph 3 are material under this Court's decision in the Bar Chris case, which I have referred to in my memorandum.

THE COURT: I again think that a reasonable jury could determine that this was material. I consider that a jury issue.

MR. MARTIN: Also, your Honor, I don't think there is any proof here that the Eastern contract, for example, was not what it purported to be. There's been no proof offered by the Government that that was anything other than a commitment signed by an authorized representative of Eastern Airlines.

THE COURT: I think the Government has ample evidence in which to argue to the jury that in the most hectic hours at Pandick Press, by that time Natelli and Scansaroli should have known full well, that a sudden substitution of this kind was suspect on its face.

Again, the factfinder might determine differently, but there's evidence, even though I cut down on the Government here, as Mr. Velie will, I'm sure, confide in you any time you let him -- I still think dispite his feelings on

the matter, there is evidence which he or whoever is going to argue to this jury can say that Natelli should have known by that time if he knew anything in this world that the Eastern deal was a dubious proposition at best.

MR. MARTIN: I submit, your Honor, there is also evidence that after that letter was presented, the program was reviewed, the time sheets of the account executive were also reviewed -- these are all documents right from the Peat, Marwick work papers -- that showed an effort was made to determine whether that was a commitment that could be brought.

THE COURT: The Government can argue those were just after the fact, at a time when it was to the interest of the defendants to do a little covering up.

Again, I'm not saying this is so. I'm just saying there's evidence from which the Government could so argue, which I believe is sufficient. I agree with you, the test is laid down very succinctly in that quotation from U. S. Against Simon. I just think there's sufficient.

Exception to your client, Anthony Natelli.

MR. MARTIN: I also your Honor, would move to strike the allegations of paragraph 4 on the ground that that --

THE COURT: Paragraph 4, you are talking about count 2?

MR. MARTIN: Yes, which is basically, as I read it, the Eastern Airlines allegation as well as the allegation with regard to the Oberlander work papers, there being no evidence that the Oberlander work papers, the decision on that was anything wrong; Mr. Kurek testifying it was a decision that he and Scansaroli made in what he considered to be an honest effort to arrive at a resolution, a proper resolution of the problem.

THE COURT: The whole point is, the Government wants to argue, and I think they can fairly from evidence in the case, that this was less than an honest effort and that Kurek and Scansaroli well knew by that time it was less than an honest effort.

Again, I understand you, but I don't think the Judge should dismiss when there is evidence which could convince a reasonable jury to the contrary of what you are saying.

MR. MARTIN: Your Honor, I have other motions that I would like to make. Would you rather hear from Mr. Stillman --

THE COURT: No, let's hear all yours.

MR. MARTIN: Your Honor, at this point I would like to renew a motion which your Honor gave me the right to renew at pre-trial, and that is the motion to have produced the grand jury testimony of defense witnesses who have --

people who have indicated they will be defense witnesses, who indicated that they had no objection to having that material made available.

You may recall, your Honor, this was made at pre-trial.

THE COURT: I know. You haven't enlightened me at all. I don't know of any such witnesses to this day.

MR. MARTIN: We filed with the original motion affidavits from a Mr. Cologna and Mr. Otkiss saying that they intended to be defense witnesses. We also filed affidavits from Mr. Johnston and Mr. Oberlander who were Government witnesses. As to them the issue is moot.

THE COURT: The issue may still be moot as to the other two. If they appear, that's something else again. I haven't seen them yet. I don't understand how any Court could rationally pass on this motion at this time.

MR. MARTIN: Your Honor, I represent to the Court as an officer of the Court that we intend to call these two people and they will appear.

THE COURT: At that time we will cope with the problem, not now. I am concerned with the Goverment's case, not with whatever is going to happen later.

MR. MARTIN: If I can just make myself clear on that, your Honor.

The purpose of that was to allow these people the opportunity , which Government witnesses have, to review their testimony.

THE COURT: Fine. The day when they appear here we will treat that. I have enough trouble dealing with what is already before us without anticipating the future of the Western World. Indeed, in a more limited scope, the future of this case. I don't know what it going to happen. I refuse to be booby-trapped into assuming anything at this point.

I know your intentions are good. I don't mean to the contrary.

I see no plausibility in an already overly-wretched system to get that kind of anticipatory ruling before a Court. I don't want to do that.

MR. MARTIN: I was trying to avoid the time

problems that would be created at that time.

THE COURT: One thing at a time. We haven't finished the Government's case quite yet.

Let's go on. What else?

MR. MARTIN: At this time, your Honor, I would ask theCourt to call upon the Government to tell the defense whether there is any material that should be turned over to us at this point under Brady versus Maryland.

THE COURT: I assume Mr.Velie and his associates know the rule of Brady. I gather that if he knew of anything, he would have turned it over by now.

MR. VELIE: Yes. Mr.Stillman can attest to the fact that I have prior to the trial mailed him a letter with a statement in it which tended to establish one theory of innocence for Mr.Scansaroli which apparently has not surfaced so far at the trial.

THE COURT: All right.

MR. VELIE: If I know of anything, I have already turned it over one way or another. I don't know of anything further.

THE COURT: All right.

MR. MARTIN: Your Honor, at this time I would move for the right to inspect the grand jury testimony and any statements of witnesses that the Government has

interviewed on the ground that we are aware of at least one incident which fortuitously came to our attention, which exculpatory material was not brought to our attention.

THE COURT: Let me see if I understand this. You want to examine the grand jury minutes of whom?

MR.MARTIN: Of all of the witnesses that have appeared --

THE COURT: Appeared before the grand jury?

MR. MARTIN: That is correct.

THE COURT: But did not testify as Government witnesses?

MR. MARTIN: That is correct.

THE COURT: That motion is denied.

MR. MARTIN: May I state for the record the reason for that, your Honor? Unfortunately I worked for the Government when Indiviglio was decided. I have been very leary of not stating my record fully.

Y our Honor, the basis of this motion is as follows: A witness who we will call for the defense came to our attention totally fortuitously. This witness had real evidence. It was available. He had spoken to the Government. They took not steps to advise us of this information.

It seems to me, your Honor, that we should have

and would be happy to have a hearing on this, proof that the Government consciously or unconsciously is not providing the type of information that we are entitled to under Brady vs. Maryland.

THE COURT: I am sorry. I have ample reason to doubt that. It has been seldom that I can think of a case in which more information had been available to the defense than there is in this one. You have had available, everybody has, the entire file of this situation. There is absolutely no doubt of that.

The room shows it. The trial record so far if read intelligently by knowledgeable people shows that. I just don't understand why you could come in here and make an accusation of that kind. I don't think that sounds fair, reasonable or proper.

Who is this unnamed individual?

MR. MARTIN: A man by the name of Arnold Berman.

THE COURT: ArnoldBerman?

MR. MARTIN: Arnold Berman was an accountant for -- who did work for New England Travel. He will testify, your Honor, that in the course -- in January or February of 1969 as New England Travel was being acquired by National Student Marketing, he had occasion to discuss with Mr. Natelli the question of what this unbilled receivable item was and what

gab-5

it all related to.

Mr. Natelli invited him to the Washington office of Peat, Marwick & Mitchell, at which time Mr. Natelli introduced him to Mr. Scansaroli and told Mr. Scansaroli to make the work papers on that audit of August 31, 1968 available to Mr.Berman, and that Mr.Scansaroli pursuant to that instruction gave Mr.Berman for his review the special sales work binder which has been introduced here as Government Exhibit 3.

I think in a case dealing with the state of mind such as this, evidence of that nature, that these people were not concerned, did make these papers available, is important evidence on the issue of state of mind.

THE COURT: Let me see if I follow this. The Government hasn't produced Berman. There is in evidence the folder known as Government Exhibit 3. I am frank to say I don't understand it.

MR. MARTIN: I think under Brady against Maryland there is a duty when there is that type of evidence which is helpful to the defense, which the Government is aware of, to make that known to us. That is the purpose --

THE COURT: That is my point. If I understand your correctly, the evidence has long been available. It is a matter of record. And if you somehow deem that Brady

gab-6

vs. Maryland material, fine, there it is. You know about it.

MR. MARTIN: Mr.Berman's testimony in this report was not a matter of record. He did not testify in the SEC. He came to our attention --

THE COURT: I know. The Government has no obligation to put on everybody and anybody in this case. I just don't follow this at all.

MR. MARTIN: I think --

THE COURT: What does Berman have to do --

MR. MARTIN: They don't have an obligation to put on anyone. I agree. I do believe they have an obligation to tell us of the existence of witnesses who have testimony that could be useful to the defense. I think this testimony is useful on the state of mind of these two defendants regarding this August 31 --

THE COURT: You know about Berman, Mr. Martin. You claim he is a very important witness. I must say I am a little puzzled. I don't follow this at all.

MR. MARTIN: I know about it, but not through any effort of the Government. The Government knew about this and had no way of knowing that we would know about it. I think that that is the indication that I think gives rise to a duty under Brady versus Maryland to come forward --

gab-7

MR. VELIE: I have one brief interruption.

Did Mr.Martin say one of the defendants showed Mr. Berman something?

THE COURT: No, I don't think he said that.

MR. VELIE: Yes, he did. In fact, that means the defendants knew about this. They knew about it when the activity was going on.

How this has anything to do with the Government I will never see.

THE COURT: I am mystified. In any event, Mr. Martin, whatever it is you are seeking to have this Court do, I would like to know.

MR. MARTIN: Your Honor, I am asking for an opportunity to review the grand jury testimony and statements of all witnesses so Imay determine whether or not there is information in that helpful to the defense.

End 1B

THE COURT: As I said, I deny that motion.

MR. MARTIN: Your Honor, there is another matter that will come up this morning, I understand, from Mr. Velie, that he has, intends to introduce or to offer SEC testimony of --

THE COURT: Oh, no. Look, we were told last evening -- I have gotten to the point where I don't believe anything anybody tells me in this case. Do you mean to say we are now going into other evidence as of this morning?

MR. VELIE: Your Honor, I said -- I have this much SEC transcript to read, about two paragraphs. I will read it myself. I don't think it will take more than three minutes.

THE COURT: What is the problem on that?

MR. MARTIN: Your Honor, this problem relates to the fact that in January of 1970 it was determined that an error had been made in the escalation of the calculation of the deferred tax provision. This was an error found out in January relating to the $188,750 tax item that has been referred to throughout this trial. I think everybody has agreed that that was an error, that there is no evidence that that was something concocted, indeed, Mr. Velie -- one of the witnesses we interviewed told me that Mr. Velie agreed this was an honest error.

THE COURT: Are we going to get into more -- what about this, Mr.Velie? Honestly, this case --

MR. VELIE: Your Honor, this is a fraud case. We think the tax credit is a fraud. I don't know where Mr.Martin gets all these things from. I am shocked and surprised this morning.

MR. MARTIN: I was told that by Mr. Steven Finney who is going to be an expert for the defense.

THE COURT: I don't believe this rhetoric from either side.

Do you have any objection to this, fine. We will do it if, as and when it comes up. I appreciate your trying to do it in advance but --

MR. VELIE: The SEC transcript, your Honor, I have it right here, if that is what you want to see. Sorry to say it got marked up a little bit in the course of many reviews. It starts at Line 14 on Page 205, and runs to Line 14 on Page 206 and there is one other very brief section.

MR. STILLMAN: Whose transcript is that?

MR. VELIE: I believe Mr. Natelli.

THE COURT: Who is the speaker?

MR. VELIE: The speaker is Mr. Natelli, your Honor.

MR. MARTIN: 14 of 201?

MR. VELIE: Right.

THE COURT: It goes over to what on Page 206?

MR. VELIE: Line 14, your Honor. I have penciled in where it says end.

THE COURT: What is the rest?

MR. VELIE: The rest is in here. This is Mr.Scansaroli's transcript. It starts on Line 19 at 236 and runs to about Line 10 on 238.

THE COURT: This, again, is Mr. Natelli?

MR. VELIE: No, that is Mr.Scansaroli, the second. I have one for each. Again, interlocking admissions.

THE COURT: It seems to me you are injecting an entirely new note into the case.

MR. VELIE: No, your Honor. I believe the record fully reflects the fact in various exchanges of one kind or another that the tax credit shown in one of our charts, as a matter of fact, is the reason why the defendants thought that they didn't have to disclose anything. This very tax credit turns out not to have existed and that the defense' explanation of it is that it was a mistake. We are simply going to point out that the tax credit was, at best, a mistake from their own transcripts.

THE COURT: Accepting all of that, I still don't understand what it does to support your theory of the case.

MR. VELIE: Well, the explanation already in the record in favor of the defendants is that they thought that the net amount of $21,000 on the bottom line was immaterial. They arrive at this net amount by coming up with a tax credit in the amount of $188,750.

THE COURT: I understand all that, Mr.Velie.

MR. VELIE: That tax credit happens to be exactly to the penny the amount of the three contracts that they wrote off, Number 1, Number 2, materialized exactly the same ~~night~~ night as the need for the writeoff.

Number 3, it turns out there was no such tax credit in that amount. Those three powerful circumstantial points tend to show their ~~action~~ actual excuse is nonsense.

THE COURT: Okay, I get you. Mr. Martin, did we exhaust all your motions?

MR. MARTIN: Your Honor, there is only one other matter I would prefer to take up after this in the robing room.

THE COURT: All right, Mr.Stillman.

MR. STILLMAN: Yes, sir, your Honor. At this time on behalf of Joseph -- I say at this time, obviously, assuming that this is the motion being deemed made at the end of the Government's case and I at this time move for a judgment of acquittal on behalf of Joseph Scansaroli for

the following reasons:

I will try to be brief. I know that it is getting on.

THE COURT: Please do, because I am not, as I have tried to tell you gentlemen before, I have been sitting here. You don't have to expatiate in detail. You really don't.

MR. STILLMAN: I appreciate that, sir. I think, your Honor, it is important that we bear in mind and I don't mean to be presumptuous in making the statement, but that we bear in mind that each of the -- the guilt as to each of these two men must be determined individually.

THE COURT: No doubt about that.

MR. STILLMAN: I think the evidence shows Joseph Scansaroli was employed by Peat, Marwick & Mitchell. That he was not the man who was in charge of making the decision. I think the evidence shows, your Honor, through the mouth of every witness who testified for the Government that any contact that witness had with Joseph Scansaroli was marked by open conduct on his part.

I think the whole affair of Oberlander, your Honor, reflects the fact that if Mr. Scansaroli was -- had it in his mind to conceal something that occurred in 1968, that he could have done in August what he did in May, namely,

to conduct that review by himself. I think the selection of Oberlander, a young man working in the firm reflects the fact that Scansaroli's mind was clear that he had nothing to be concerned about and he had Oberlander do this work.

The fact that he went on and spoke with Bernard Kurek concerning the matter and came to a resolution, your Honor discounts Kurek's testimony that so far as Kurek was concerned, I think it was a matter being discussed with two accountants, between two accountants. The fact of the matter is, if your Honor please, that as a result of that conversation, approximately one-~~half~~ third or about ~~40~~ 30 per cent of the receivables which had been question by Oberlander were in fact written off by the company.

I think the evidence shows, your Honor, that throughout this matter when Johnny Johnston came over to speak, to look into this matter, and he was sitting next to Scansaroli we have Mr. Johnston's sworn testimony that Scansaroli was not concerned. He said go ahead, do whatever you have to do but do your work. When it came to developing a program to review the 19 -- the receivables at 8/31/1969 and Oberlander presented his work program to Mr.Scansaroli, he made but another suggestion as to a step to be taken so that Oberlander could satisfy himself that this was in fact a good asset.

I think if your Honor please, that the evidence overwhelmingly demonstrates the absence of any criminal intent whatsoever on behalf of Joseph Scansaroli. Whatever those charts show, your Honor, they do not show that the man acted with any kind of evil intent in anything that he did throughout the course of this matter. And I would respectfully defy the Government to come up with some reasonable evidence to demonstrate that Scansaroli had any evil intent whatsoever during the time from August of 1968 until October '69.

And even, your Honor, it is a small thing, but when he goes to work for the company, the evidence shows through Kurek that Scansaroli went there, he was a man willing to open up his mouth, if something bothered him, he would speak out about it. He doesn't go and suddenly jump in a bed with Kurek and with Randall whom we now know are confessed criminals. He continues to do his job as an accountant. I respectfully submit on the state of this record, it would be an injustice to let this matter proceed any further with respect to Joseph Scansaroli.

I respectfully urge you to dismiss it now.

THE COURT: Well, again, as I observed to Mr. Martin, I am well aware in addition to the matters you pointed to there are other matters which a fact finder could consider very much in favor of Mr. Scansaroli, but the inquiry

here is somewhat more limited. I believe there is evidence from the Government's point of view, particularly documentary evidence alone, which might convince a reasonable jury that Scansaroli, well aware of what was going on, participated in this affair with an intent to defraud as the Government has claimed to this jury it will prove. And I think that's sufficient under the legal tests now pertinent in our circuit, so with all due respect, I deny your motion and plan to put the case to the jury.

MR. STILLMAN: Your Honor, at this time I would also like to move to strike the following evidence which your Honor received subject to connection.

THE COURT: I have already ruled that I am taking all that because I think there is sufficient connection.

MR. STILLMAN: May I just for the record, your Honor, note the areas that I specifically have in mind and I will go through them very rapidly.

THE COURT: Sure.

MR. STILLMAN: Transcript at page 149 and 150, conversation between Kurek and Randall.

Page -- in which only the two of them were present.

211 to 218, conversation between Kurek and Randall, only the two of them present.

221 to 223, March 8, another meeting, Kurek and

Randall, only the two of them present.

224, Exhibit 10A discussing a conversation between Mr. Natelli and Mr. Randall and apparently Kurek and Mr. Scansaroli not present.

233, conversation between -- June 3, 1969, Mr. Natelli and Mr. Kurek. Mr. Scansaroli not present.

June 9, 1969, meeting of the Finance Committee. Scansaroli not present.

239, Exhibit 15, discussed at that meeting Scansaroli not present, no evidence he ever saw it.

245 to 246, some partial notes of that meeting.

The affair of the Eastern Airlines, if your Honor please, which came out of the printer. I believe the evidence shows Scansaroli left the printer and did not participate in the entire matter with respect to the booking of Eastern and I move to strike that.

THE COURT: I assumed at the time and I still assume, it may well be that he wasn't even -- even assuming he were within the printer's establishment, he was not privy to that conversation.

MR. STILLMAN: Yes, your Honor.

THE COURT: But this is true with respect to all these items which you fairly stated, and my view is that they are clearly admissible because count 2 really charges a

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scheme, as I would put it, or as the Government would put it, obviously, that what was going on here is that management decided to insist on presenting a fraudulent picture through its proxy statement in order to support its program of aggressive acquisition of other companies, mergers and the like, and that finally the management tips overboard the good sense and judgment of the defendants or one of them here and that the defendants according to the Government's theory, further aided and abetted in this scheme which was primarily in the first instance at least management dominated.

Is that a fair statement of the Government's position?

MR. VELIE: Yes, your Honor.

THE COURT: Simplistic, to be sure, but fair, is that right?

MR. VELIE: I thought it was an excellent statement.

THE COURT: I think that the jury then can consider that, However, I can assure you, Mr. Stillman, I intend to charge this jury that they have got to focus on evidence which shows what the defendant in question did or said, not on what others said, in order to determine whether or not they had the requisite intent, knowledge and desire to participate and whether or not in fact they did participate.

MR. STILLMAN: Your Honor, May I, and I don't mean to carry this on too far, but I think I would be grossly negligent if I did not note for the record at this time my deep concern over the fact that the Government has spoken with Cort Randall, has spoken with Dennis Kelly, that neither of those men has indicated with respect to that Eastern commitment, as I understand it from what I read in the voir dire on their please of guilty, that they unlawfully, wilfully and knowingly set out to defraud these auditors and I put to the Government its burden with respect to matters of that kind when they are charging these men with being common criminals with the knowledge that the Government has.

Does the Government say these men misrepresented to your Honor in open court, and I think they had an obligation to speak to that issue at that time.

THE COURT: Do you care to comment?

MR. VELIE: Yes. The defense has the subpoena power. It is obvious that what these people did has a tangential relevants to what these defendants did and if the defendants think it is relevant in some way, they have got the subpoena power. They can go out, they can interview these people, put them on the stand if they wish. If they have any trouble, they can get a ruling from your Honor with respect to that. With respect to any Fifth Amendment rights

that there might be lurking in the background after they have pleaded guilty.

THE COURT: Wait a minute. Let me say perhaps Mr. Stillman means this but I don't think so, but whatever Mr. Stillman means, I would like to know from you.

Your position is that whatever Randall and others may have said in their sentencing -- excuse me, ~~please~~ pleas of guilty colloquys, your contention is that the two defendants here on trial were aiding and abetting Cort Randall, Kurek and others?

MR. VELIE: Absolutely.

Now, the point I take it Mr. Stillman is trying to make is this.

Mr. Randall, when he confessed before your Honor, said that the Pontiac letter was a forgery. And that he did not reveal this to the accountants. The fact was the accountants wrote off the Pontiac letter anyhow, whether or not they knew it was a forgery or whether Randall told them that, and they still didn't disclose that to the public. They knew it was no good and didn't disclose it. The same thing with the Eastern letter.

THE COURT: I just wanted to make sure that you made yourself clear.

Now, you are, of course, correct and I am sure

Mr. Stillman won't deny this that Cort Randall is clearly subject to subpoena and if he isn't, I would certainly intervene for the defendants or either one of them who wanted to call them since he is under the control of this Court in this case, but I don't think either Mr. Martin or Mr. Stillman needs to be lectured by you or me, Mr. Velie, on that score.

MR. STILLMAN: Of course, he refuses to speak to us, your Honor.

THE COURT: That I don't know but that doesn't answer the problem of subpoenaing him or asking this Court to order him to appear if you like and you know that.

MR. STILLMAN: I appreciate that.

MR. MARTIN: Your Honor, there was a matter I wanted to take up --

THE COURT: I don't want to delay the jury. Is it fundamental that we delay the jury again?

MR. MARTIN: Absolutely not.

THE COURT: I plan to take it up at the first available recess.

(In open court, jury present.)

THE COURT: I just learned that one of you is not here, ladies and gentlemen. I am sorry, I did not realize that. We will wait a few minutes patiently. In the meantime,

(In open court, jury present.)

THE COURT: Well, ladies and gentlemen of the jury, I think we are ready to go forward.

Mr. Stillman, I think you wanted to go to recross?

MR. STILLMAN: Yes, your Honor. I think Mr. Velie wants me to yield for a question, and I do.

MR. VELIE: I move now to reopen the redirect for a question or two, if I may.

THE COURT: Mr. Dingwall.

xxx I A N D I N G W A L L, resumed.

xxx CONTINUED REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr. Dingwall, you may recall on cross examination by Mr. Stillman yesterday afternoon a question with respect to the Carnation amount of $11,200. Mr. Stillman asked you about that, and you may recall that Mr. Stillman asked you why didn't you show that Carnation had been indicated by Mr. Oberlander to be a write up, that is that the amount should be written up on Mr. Oberlander's schedule.

Do you recall those questions and answers in that area?

A Yes, I do. I believe Mr. Stillman said there should have been an upward adjustment of $15,000.

Q That's what Mr. Oberlander had down in his piece of

paper, is that correct?

A That's correct.

Q In fact, did the company's book reflect whether Carnation was written up as Mr. Oberlander wrote down?

A I'm not aware of any write up in the amount of $15,000, no.

Q Are you aware of a write off of the Carnation amount of $11,200?

A This $11,200 amount was written off of the company's books in August of 1969.

MR. VELIE: You may inquire.

xx RECROSS EXAMINATION

BY MR. STILLMAN:

Q To ascertain that last piece of information you gave us, Mr. Dingwall, I gather you went to some records of the company which are on this card that you have here, is that the idea?

A That's correct.

Q You found that information with respect to Mr. Oberlander, with respect to the fact that Carnation, as you say, was ultimately written off, is that correct?

A Yes, sir.

Q But there is no question, is there, that on Mr. Oberlander's schedule on Carnation at this line, he has the

information that $15,000 in his view should be a write up with respect to Carnation, is that right?

A When you say, "this line", sir, you confuse me.

Q I'm sorry. I didn't mean to confuse you at all. I refer to the line that says Carnation.

A Correct.

Q With respect to that line in Mr. Oberlander's work paper, he reflects in his comments that there should be or considered a $15,000 increase with respect to Carnation, is that correct?

A That is correct.

Q The fact of the matter is, that does not appear on your schedule as we can all see, is that correct?

A Correct.

Q Mr. Velie asked you a few questions on redirect examination with respect to some -- they call these things accounting principle board of APB's, is that correct?

A Yes, sir.

Q You are a certified public accountant, aren't you?

A I am.

Q When didyou become certified?

A Approximately February of 1970.

Q '70.

Prior to that time you had been in school?

A I was still in school.

Q Still in school. You became certified while you were in school?

A That's correct.

Q I see.

You have to practice before you become certified?

A Not in Maryland.

Q That's true in other states, though, isn't it?

A It may be. I don't know.

Q In any event, you graduated from school, you became certified.

Did you then go out and function as an accountant in some capacity?

A I did.

Q Where did you work first, sir?

A I went to work for the public accounting firm of Ernst & Ernst, one of the so-called big eight.

A That's correct.

Q How long wereyou with that firm?

A Approximately four and a half years.

Q Did you go from Ernst & Ernst to the SEC?

A No, I went to work for a -- as a controller in a real estate investment corporation.

Q In the Washington, Maryland area?

A That's correct.

Q Was it from that position that you went to the Commission?

A That's correct.

Q All right.

In the work that you did for Ernst & Ernst as an accountant, were you called upon to make judgments with respect to various matters from time to time?

A Yes, sir.

Q That is one of the things that an auditor does in the course of his work, is it not, that is, to make judgments with respect to matters that are placed before him?

A Correct.

Q Is that right?

A Correct.

Q An auditor endeavors to do that to the best of his God given ability as supplemented by his training, is that right?

A Hopefully, yes.

Q All right.

These accounting principle boards, APB, you said that they are -- I think the word you used was binding, is that right, binding on accountants?

A They are.

Q Do you know this man Burton?

A I do know Sandy Burton.

Q Sandy Burton, I am sorry. Is that his name, John, but everybody calls him Sandy?

A That is correct.

Q All right. He is what? He is the chief accountant of theSecurities andExchange Commission?

A He is.

Q All right. Do you know whether or not Mr. Burton has ever expressed the view that these APB pronouncements should not be followed blindly?

A I don't know of any view of Mr. Burton's in that regard.

Q You don't know of that?

A No,sir, I don't.

Q All right. If he expressed such a view, would you disagree with it?

A No, I wouldn't disagree with that.

Q Is it fair to say, Mr. Dingwall, you have these APBs and you have the other literature, but the final analysis and the work that auditors do, that you did when you were with Ernst & Ernst, is to do your level best to make judgments on situations that you confront in the day-to-day work as an auditor?

A That is true.

Q When you did that Chart 5, and I don't want to take the time to put it back up again, that Chart 5, you had approximately $230,000 with respect to billed amounts, do you remember that, or 223, I think is the amount.

A I think 223 is the amount, yes.

Q You and I discussed certain entries that you found in the journal entries and we first put on two BArnes-Hind and we took one BArnes-Hind off, do you remember?

A I recall that.

Q With respect to Listerine, do you recall that you looked at some journal entry andyou called out Listerine and I wrote it up on the board? Do you remember that?

A I do remember that.

Q And it was subsequent to that that Mr.Velie called to your attention, I gather, the fact that Listerine was a '69 contract and, therefore, we took it off the board, is that right?

A Let me say that I have always known that that Listerene amount was a '69 amount.

Q All right.

A My confusion was whether or not the duPont amount was, in fact, a 1969 amount.

Q When you and I were discussing that yesterday on

cross-examination by me, you called out the Listerine amount, didn't you?

MR. VELIE: Excuse me. May we have the question and answer rather than a characterization here? Do you have a page you are reading from?

MR. STILLMAN: I am just waiting for a ruling.

May I proceed, your Honor?

THE COURT: If he understands the question?

Do you understand what he is asking?

THE WITNESS: I do.

THE COURT: Go ahead and answer.

A Your questioning was in this context. You asked me to look at a certain journal voucher and asked me if the amounts contained in that journal voucher were included as being billed on my schedule. I then called out the amounts in your journal voucher that were not reported on my Schedule 5.

The reason, as we later discovered, that these amounts fell down was that they, in fact, were '69 amounts. I never had an opportunity to tell you that they were '69 amounts.

Q Did I cut you off at some point?

A Well, it was a matter of me being responsive to your question and you not asking that question.

Q I see. Tell me, with respect to the Barnes-Hind of about $23,000, there is no dispute between us, is there, that that was inadvertently left off your chart?

MR. VELIE: Objection. I believe that that unfairly states all the previous evidence on this matter.

THE COURT: That may be, but I don't know why we can't ask a question. Put it again.

Q Put the chart up if it will help you, Mr. Dingwall. Can you tell us whether the approximately $23,000 BArnes-Hind amount, and you know the one I am referring to, whether that was inadvertently left off of your schedule?

A It was not inadvertently left off my schedule.

Q Was it intentionally left off your schedule?

A My schedule simply summarized the amounts included as being billed on Government Exhibit 15.

Q And in doing that did you ignore material, for example, that was contained in Government Exhibit 13?

A I was certainly aware of it at the time I prepared the chart.

Q Did you make a conscious decision then not to reflect the information on Barnes-Hind that was contained in Government Exhibit 15 with respect to that $23,000 contract?

A No. The schedule was simply prepared from Government Exhibit 15 and that is the end of it.

Q Does that say "Summary of entries"in Government Exhibit 3, 13 and 15?

A It does, in fact.

Q Does it say that it is only Exhibit 15?

A No, it doesn't.

Q You stand by your answer, Mr. Dingwall, that the information that we are talking about contained in Government Exhibit 13 was not intentionally left off this schedule by you?

A I do, indeed.

End 3B

Q You say it was no mistake that you left it off?

A It was no mistake at all.

Q And where on this chart does it say that the information in the billed amount only comes from Government Exhibit 15?

A It doesn't say that on my chart. However, in my testimony I certainly told you where that amount came from.

Q Not on the chart but it is in your testimony, is that the idea?

A That is what I just said.

Q With respect to that other Barnes & Hind contract, $41,867, that was the Barnes-Hind contract, if you remember, that was first -- it was a journal entry that showed it was on. Then you pointed out to us the journal entry that reversed it, do you remember that?

A I did,yes.

Q You showed me this journal entry. I will show you this without marking it. It is the one you gave me yesterday, Mr.Velie. March 1969. It is a journal entry that apparently reverses the prior billing with respect to that $41,867 Barnes-Hind contract. I am showing you journal voucher 272, correct?

A You were speaking at the time I was reading. Coul you restate your question?

Q Is this the journal entry which reversed the billing so far as you could tell of the Barnes-Hind contract of $41,867?

A That is what the records of the company show.

Q Was it this journal entry that caused you not to put this $41,867 contract or billing, rather, on Government Exhibit 5?

A No.

Q It was the fact that it was not contained in Government Exhibit 15, is that the idea?

A That is my statement.

Q And this schedule was something thatyou and Mr. Velie over here put together for presentation to this jury, is that right?

A That is correct.

MR. STILLMAN: I have nothing further.

BY MR. MARTIN:

Q While we have this 15 up, that says that 8/15 DHO booked. That term "booked" is really inaccurate, isn't it?

THE COURT: I can't understandyou and I doubt whether the witness can. Did you say "accurate" or "inaccurate"?

Q Is inaccurate, is it not?

A Is it inaccurate to say the amount was booked?

Q On August 15.

A Well,I think if you recall my testimony, I said that that amount was added to a schedule prepared by Douglas Oberlander and that schedule was dated August 15.

Q Mr.Oberlander said the date on his schedule did not necessarily relate to when all the work was finished, did it?

THE COURT: Gentlemen, this is -- you have argued this. I don't think we have to hear this on recross.

MR.MARTIN: If the Government will concede to take that off the chart.

THE COURT: You have the evidence of Oberlander. You don't have to bring that to his attention. If you want to argue it to the jury, fine, but I don't think youhave to put questions like that.

Q You say you spent some time with Ernst & Ernst?

A Yes, I did.

Q What level did you reach, how was Ernst & Ernst' structure? We ~~have~~ have heard about Peat, Marwick's structure.

A I imagine they were much the same.

Q What was your title when you left?

A I don't really know what Peat, Marwick's

hierarchy is. We have a staff accountant level. In charge accountant level and a senior accountant level. And I left at senior accountant level.

Q Is that the next level below partner?

A No, it is not.

Q What level is above it?

A There is a supervisory level. A manager level and then the partner.

Q Did Ernst & Ernst while you were there have a procedure that even partners' work could be reviewed by specialists in the firm in certain instances?

A They had that as well as another procedure where we had an independent review committee.

Q And that is common with certainly the Big 8 firms, that there are review committees to which partners can take particular problems, is that correct?

MR. VELIE: Objection. I don't think this is particularly relevant to anything Mr. Dingwall has testified.

THE COURT: I can't hear you, Mr. Martin. You are asking him if Ernst & Ernst had what?

MR. MARTIN: I asked him if it was common to the Big 8 firms to have review committees to which partners can bring particular problems.

THE COURT: I will sustain theobjection to that.

Q You recall testifying yesterday about that footnote and the financial statements to which it related. And you described those as pro forma, is that correct?

A I believe I did use that word.

Q Were you saying that the statement of income which appears in Government Exhibit 25 was a pro forma statement, sir?

A Well, let me say that I do recall the testimony that I gave and I threw out the word pro forma. To me the word pro forma or a pro forma statement is a statement that shows amounts as they would be. It is an as if statement. And I believe I described the May 31 -- I really don't know what Ihad reference to when I said that there was a pro forma statement. Perhaps if you could show me the testimony, it will refresh me.

Q I am afraid I wasn't clear on that and that is what I asked the question for, to determine what it was you were saying was pro forma.

We are talking about a note to consolidated statement of earnings.

A That is correct. This is not a pro forma statement.

Q What are statements on auditing procedure,sir?

A Well, they are referred to as the SAP. They

are general, broad standards which set forth various responsibilities that an auditor has when he conducts an examination, financial statements, in accordance with generally accepted accounting principles where an audit extends.

Q Are they binding the way you say the APB's are binding?

A Yes, they are.

Q Will you tell the ladies and gentlemen of the jury what SAP-40 provides?

MR. VELIE: Your Honor, I object to getting into material having to do with auditing having nothing to do with the presentations we talked about yesterday.

THE COURT: You yourself on redirect got into this precise issue. I don't see how I can fairly cut off defense counsel, even though normally I would agree with you but you raised it yourself.

MR. VELIE: Your Honor, I don't believe I made myself clear. We got into an accounting presentation. Mr. Martin is getting into auditing procedures, which is quite different.

THE COURT: That may well be, but in fact they are quite closely related and I don't see how I can fairly cut him off.

Can we move to the point now, Mr. Martin.

THE WITNESS: Your question is -- I am sorry.

THE COURT: I think he hasn't finished.

Q The question is, can you tell the ladies and gentlemen of thejury what SAP-40 provides?

MR. VELIE: Is this a memory quiz?

A I have a copy of SAP-40. I believe if I can refresh my recollection I will tell you exactly what it is.

Q You testified here as an expert. I want to know if you, without resort to those documents, can tell the ladies and gentlemen of thejury what the SAP-40 provides?

THE COURT: He already answered that. He cannot. Could you gentlemen help out, please.

A I can tell you what SAP-40 is. It has to do with what an auditor is supposed to do when he is confronted with audited financial statements that don't fairly present.

THE COURT: Does one of you have a copy so we can move along here?

Q I show you a copy of SAP-40.

MR. VELIE: Would you bear with us a second, please, Mr. Martin. Let me just see if I am looking at the same thing the witness is looking at.

MR. MARTIN: Certainly.

A Okay, is there a question? I will answer it.

Q Is it fair to say, sir, that SAP-40 provide that onces there has been a pooling of interest, it would be improper to simply go back and report on one of the constitutent companies?

A It says when there is a merger you should show on a comparative basis all the companies that are included in the latest financial statement.

Q Doesn't it pr ovide, sir, that if prior year financial statements presented in comparison with current year financial statements are not restated to give appropriate recognition to a pooling of interest, the comparative financial statements are not presented on a consistent basis? In this case, the inconsistency arises not from the change in the application in accounting principle in the current year, but from the lack of such application to prior years. Such inconsistency would require a qualification in the independent auditor's report.

Isn't that correct?

A That, I believe, is a careful reading.

Q Is it correct, sir, that SAP-40 required in that when that proxy was filed that the income statement be the statement of the pooled company, that is, all of the constitutent elements of the company that was then in existence in August of 1969?

SOUTHERN DISTRICT COURT REPORTERS

A Yes, sir.

Q Now, are you familiar, sir, with APW-10?

A That is the omnibus opinion.

Q Will you tell the ladies and gentlemen of the jury how the footnote which is the subject of this chart which I believe is Exhibit 10 relate to provisions of APW-10?

A As I recall it, it is an omnibus opinion and it refers to several matters. If you will show me APW No. 10, perhaps I can make some comment.

MR. VELIE: The witness hasn't memorized these books, of course, your Honor. Why doesn't he show it to him.

MR. MARTIN: Your Honor, I object to Mr.Velie's statement.

THE COURT: I agree with you it isn't necessary. However, I do insist we have copies of these things so that we can move along.

MR. MARTIN: I am just about to do that, your Honor.

Q I show you APB-10 and in particular Paragraph 5, the last part of that. APB-10 was in effect in 1969, is that correct?

A Yes, sir.

Q And does APB-10 suggest that where you have

pooled companies that are being reported, that the companies may wish to provide reconciliation of amounts of revenues and earnings previously reported with those currently reported in order to show the effect of poolings upon the earnings trends?

A That is correct.

Q Isn't that the function of a note such as the one that appears in various forms on Government Exhibit 10? 6510.

A I am sorry, is that the form of the footnote that one would prepare pursuant to APB-10, is that your question?

Q That's right.

A That is a kind of footnote that seems to be appropriate.

Q Now, APB-10 does not mandate that such a footnote be set forth to the financial statements, does it?

A Well, it says -- the language is"may." May wish to.

Q May wish to, so they may or may not, is that correct?

A Well, strictly speaking, I would say that that is the language.

Q And is it your testimony, sir, that it was material to the trend of earnings for the originally reported

company that the sales had gone from $2,386,500 in 1967 to four million two hundred some odd thousand dollars, rather than the $4,989,000 referred to in the final proxy?

A I don't follow that question at all.

Q My question is, was it material to the trend of earning -- was the difference between the figure shown in the final proxy in the amount that you say should have been shown, that is, $4,200,000-some odd, was that matter material to trend of earnings?

MR. VELIE: I object to that.

THE COURT: Mr. Dingwall, do you understand that?

THE WITNESS: I really don't, your Honor.

THE COURT: I don't either. Please rephrase it.

Q Let me ask you this, sir. Perhaps it would be helpful to you if we got some chalk anddid it on the board. In the final proxy, sir, the figure on the company's originally reported line, $4,989,446, is that correct?

A I can't see it, but I think that is correct.

Q What is the figure that you say should be on that line?

A Do you really -- well --

Q I thought you might know it.

A Let me tell you, sir, as far as the number that should be on that line, it is a lot less than that.

Q Let's talk about -- you talk about four contracts, is that correct?

A I am not talking about that any more. You are asking me for my professional opinion as to what the sales from National Student Marketing should have been in 1968. It is clearly not $4,900,000. It is $1,700,000 less than that.

Q Of course, you weren't there, is that right?

A I wasn't there?

Q That's right.

A I wasn't there.

Q You had no responsibility to the people who bought shares of National Student Marketing after it had issued the nine-month report prepared by Michael --

MR. VELIE: This is just argument.

THE COURT: Sustained. We are all aware -- this is argument. We don't need to go into this. Is there anything else on recross-examination?

Q What was the amount of the four Michaels contracts that were adjusted retroactively?

A 738,762.

Q Can we agree to use the 750,000 for purposes of my addition?

MR. VELIE: I don't agree to use that number.

Mr.Dingwall testified to a 1.7 million number.

Q 748 what, sir?

A 752.

THE COURT: Please, start over again. This is so confusing with the two of you talking at once and it is unnecessary. What is your question?

Q I want to get the amount --

THE COURT: Not what you want to get. What is your question to this witness?

Q What is the difference between that amount and $4,989,400 --

MR. VELIE: That is objected to as being mere arithmetic from a document in evidence. He testified he wouldn't use $750,000 at all.

THE COURT: Let's go back here, gentlemen. If there is a question, I want to hear it without any interruption. If you want to object, Mr.Velie, you object.

Now put the question again. Unfortunately, Mr. Martin, I have great trouble in understanding you. I suspect the reporter does and I suspect the witness does and here we are.

I want to get the end of this cross-examination.

MR. MARTIN: So do I.

THE COURT: Let's do it.

Q What was the amount of the four Michaels contracts?

A That were written off retroactively?

Q That's right.

A 748,762. I can't read your first number, but it looks like 7 million 989, and that is not the number reported.

Q You are right. Start with one figure and replace it with another.

Now, would you agree, sir, then, that if this figure for net sales originally reported, $4,989,446 had been reduced by the amount of the total sales written off retroactively, you would come to a figure $4,240,684?

R 4A

MR. VELIE: That's objected to as argument. It is an arithmetic computation which Mr. Martin can make from documents in evidence on summation. The witness has said that's not a number he used.

MR. MARTIN: An arithmetic computation I would use preliminarily to ask questions on.

THE COURT: Do you understand that question?

THE WITNESS: Frankly, your Honor, I don't.

THE COURT: I don't either. Please rephrase it.

Q Would you agree with me, sir, if you subtract $748,762 from $4,989,446, you come to $4,240,684?

A That's a correct calculation.

Q Now, I take it, sir, that it is your testimony that if the figure inserted here for net sales originally reported was $4,240,684, you would not consider that that footnote adequately disclosed the retroactive --

MR. VELIE: I can't follow the question.

A I have no idea what the question is.

Q I want to know if your complaint about that footnote is if there is a mathematical error in one line or if it goes beyond that.

A Sir, let me tell you something that maybe will help you.

There probably is no proper footnote. The arithmetic is one thing. The statements in that footnote are

quite another. I don't believe that this is a proper footnote regardless of anything else that you might say. I really -- well, leave it there. I have a lot of problems with this footnote, I guess, is the short of it.

Q Although you don't tend to read them, is that correct?

A Sir?

MR. VELIE: Objection as argumentative.

THE COURT: I cou;dn't hear that.

Q Isn't disclosure in financial statements, Mr. Dingwall, one of the areas where there is a great deal of dispute and uncertainty within the financial -- within the accounting profession?

A You say there is a great deal of dispute and uncertainty. There are some things that as a matter of practice between one firm and another may be set out somewhat differently. However, there are some things that are crystal clear.

Q Isn't there, sir, a question of adequacy of disclosure in and what constitutes adequacy of disclosure has been written on at great length by a number of people in the profession, isn't that correct?

A Of course.

Q And you know a man named John C. Burton, I under-

stand?

A I do indeed.

Q And would you agree with this statement that Mr. Burton made in an article which he wrote:

"Anyone who has read through a complicated proxy statement and I'd say that number is in the order of magnitude of one, one hundredth of one per cent who receive complicated proxy statements will soon find out what the hidden fact doctrine at all means. After you have read the first 14 pages of a financial statement with notes and other data, there is a certain element of discouragement that can set in. Accordingly, there are clearly problems to the idea of more and more disclosure for the average investor and even for the sophisticated analysis."

Would you agree with that statement of Mr. Burton?

A I have no -- no, I don't know how many pages of anything a person would read. The statistic quoted in there, I have no way of knowing whether that's an accurate statistic. You know, there are a lot of things that are said there.

Q Are you familiar with a statement on auditing procedure number 33, that is, SAP 33?

A I am.

Q Does that deal with, sir, questions of disclosure?

SAP 33, Chapter 9.

A SAP 33 sets out certain broad standards of disclosure.

Q Does SAP 33 provide, sir, what constitutes a matter requiring disclosure, its for the independent auditor to decide in the exercise of his judgment, in the light of the circumstances and facts which he is aware at the time. That later events might give greater importance to matters which at the time appeared to be minor consequence does not of itself impune the soundness of the judgment for sight and hindsight cannot be admitted to be of equal weight in casting upon conclusions reached at an earlier time. Hindsight should be eliminated from the factor by which soundness and pass conclusions are judged." Is that correct?

A That seems like a fair reading. An accurate reading.

Q Is it fair to say, sir, insofar as the facts of this case are concerned, the events of 1968 and 1969, you bring us nothing but hindsight?

MR. VELIE: I object.

THE COURT: All right, thank you, Mr. Dingwall. You may step down.

(Witness excused.)

MR. VELIE: Your Honor, if I may, I have a brief

transcript to read, brief enough that I think I can read both sides myself without confusing the jury.

THE COURT: However, would you please delineate the exhibit number, the page so that defense counsel and the Judge can follow before you begin.

MR. VELIE: Yes, sir.

MR. STILLMAN: Your Honor, you have our position with respect to his reading.

THE COURT: I think I do but that's why I asked. I want to find out exactly what we are talking about.

MR. VELIE: Yes, of course, your Honor. I believe I passed you my copy this morning, your Honor. If I am not mistaken, I may have one copy of it.

THE COURT: I still think the record should reflect precisely what I just said.

MR. VELIE: Yes, your Honor. I'm just looking for the second volume I would have to read from.

Your Honor, the record should reflect I am about to read from Mr. Natelli's testimony before the SEC taken on May 11, 1971. I am reading from a transcript at page 205. I am going to continue until page 206. I will begin at line 14 of page 205, and end at --

THE COURT: Doesn't this transcript have a Government Exhibit number?

MR. VELIE: No, your Honor, it does not.

THE COURT: All right. I will be happy to mark it.

THE COURT: Wait a minute. I want to give the defendants a change here. You gentlemen have both objected to this testimony, is that correct?

MR. MARTIN: That's right, your Honor. On relevance.

THE COURT: Those objections are overruled. However, I should say that my understanding is that you are only offering this transcript that you are now reading from as to the defendant Natelli.

MR. VELIE: Yes, your Honor.

THE COURT: And not as to the defendant Scansaroli.

MR. VELIE: Precisely.

THE COURT: All right, I wanted the jury to understand that. Go ahead.

MR. VELIE: Yes. Now, you said that other factors came up after April 1969 with regard to calculation of the $188,750 extraordinary items reflected in the proxy statement.

"A Yes.

"Q Would you relate the sequence of events and what happened?

"A In the course of completing the August 31, 1969

exam and reviewing the tax calculation, at that time the provision that we had recalculated back in April we realized, and I guess this was probably based on our going through things with the tax people as what is our deferred tax payments now and trying to lock that in and when it would occur and where it was coming from, but in so doing, we realized that when we recalculated the doggone thing in April, I really don't know who as to laying the blame on any particular party, but when we did recalculate it within our organization, it was within Peat, Marwick that we came up with this problem.

"We fouled up by about a hundred thousand dollars. Now, obviously I knew nothing about this. We investigated it and I think I can explain to you why it happened.

"Q When you say you fouled up by a hundred thousand dollars, overstated, understated or exactly what is it?

"A Well, to try to put it in terms of the discussion we have just previously had, instead of reducing the deferred tax liability by $188,000, it appeared that we should only reduce it by $88,000."

Your Honor, I now propose to read from the examination by the SEC of Joseph Scansaroli taken on April 12, 1971. This has no Government exhibit number, but I propose to read from a page 238 at line 18 to page 238, line 6. This is

offered only as to the defendant Scansaroli.

THE COURT: And, of course, Mr. Stillman, I note the objection that you have for your client. I overrule that. This testimony will be received as to your client only and not as to Mr. Natelli.

MR. STILLMAN: Your Honor, I wonder if we could, I'm sure Mr. Velie would agree with me that the transcript reflects that Mr. Scansaroli was advised of his right to remain silent. He was advised of his right to counsel and that he could have counsel sitting with him, that he appeared for the first time on March 22, 1971, was asked if he was represented by counsel. He indicated that he was not and he was asked whether he was ready to proceed without counsel.

He said that he was and in fact he did.

MR. VELIE: That is so.

This is Mr. Scansaroli's voice.

"I think, Jim" meaning Jim Ford, an SEC accountant -- "I think Jim called and wanted to know how did we arrive at this deferred tax provision for extraordinary item.

"Q The $188,750 in proxy?

"A Right. So we went through and talked on the phone several times. It is a complicated matter. It is roughto discuss over the phone to try to explain something like that. I don't know if he said ourselves then or later on when this

letter was written to you regarding these entries. At that time we made the recalculation. I don't recall when the recalculation was made. It was after the proxy statement but prior to this letter that was issued. We went back and discovered that the $188,000 was really incorrect. It should have been $95,000 or something like that."

MR. STILLMAN: Could we agree, Mr. Velie, that the letter that Mr. Scansaroli refers to is a letter that was written to the Securities and Exchange Commission concerning this, among other things, this tax adjustment?

MR. VELIE: Yes, of course. If I recall it correctly, it is a letter of February 16 and it bears the signature of Barnard Kurek.

THE COURT: February 16 what year?

MR. VELIE: 1970, your Honor.

Your Honor, at this time the Government rests.

THE COURT: All right.

I wonder if you gentlemen would mind coming up to the side bar with the reporter.

(At the sidebar.)

THE COURT: I take it thatyou would all make the same motions that you made earlier this morning at this point and I will make the same rulings.

MR. STILLMAN: Correct, your Honor.

MR. MARTIN: Fine, your Honor.

THE COURT: I don't want to embarrass anybody and you tell me what to do. I don't know what to say to this jury. Are we ready to go forward with witnesses or what do you want to do on the defense side?

MR. MARTIN: I think we may be ready to go forward with witnesses if we could take a five-minute recess and let me go and see if we have the witnesses to go forward with and have the final discussion with Mr. Stillman as to who they should be.

MR. VELIE: Your Honor, there are two things hanging fire.

One, as Mr. Martin indicated earlier, he has application to make in chambers. I don't know if he still wishes it. But maybe this is an opportune time for me to take up something I am concerned about. And if you wish we can either do it here or in chambers. I am indifferent.

THE COURT: I don't want to intrude on their discussion which they apparently want.

MR. VELIE: My matter should be taken up before they proceed.

THE COURT: Let's have the jury excused.

(In open court.)

THE COURT: I am going to suggest that we take a

recess at this point. I estimate it will take about ten minutes.

(Jury left the courtroom.)

(In the robing room.)

THE COURT: Now, Mr. Velie, you wish to raise something that you feel that the defense should know before they go forward, correct?

MR. VELIE: Yes, your Honor. In short I wanted to request a ruling from the Court. If Arnold Berman is a witness I would request a ruling that the testimony not go into the areas of what he did or didn't tell the Government since if he is going to testify to what Mr.-- was it Mr. Scansaroli or Mr. Natelli -- Mr. Scansaroli showed him something, surely Mr. Scansaroli knew about it, could have told his own lawyer. It is going to get us off into left field as to whether the Government is a nice guy or bad guy in the case. It is irrelevant, prejudicial and unfair in this context.

THE COURT: Again, as I said to other lawyers in the case, Mr. Velie, I am not about to make rulings in advance of this nature. I don't even know he is coming. If he is coming, I don't know what he is going to be asked. How I can be uttering blanket rulings of that nature, I fail to see. I don't know what Berman did and even though Mr. Martin mentioned his name this morning, I still don't

understand who Berman is and what his significance is.

The time will come, I assume, if it comes, and we will treat it then.

MR. VELIE: May I request as the defense has requested in another matter, that they simply signal the Court the matter is coming up so we can have a ruling out of the presence of the jury.

THE COURT: I am not even sure that's very useful at this point. We will hear the name Berman. By this time --

MR. STILLMAN: I intend to call him, your Honor. There is no question about that.

THE COURT: Let's not get into that. I want you two to have time to decide what you are going to do.

MR. MARTIN: Your Honor, I take it you have no objection if we proceed jointly. This is a joint defense.

THE COURT: Whatever you say.

Why don't you go out and put your heads together on what you are going to do next.

(In open court, jury present.)

(In open court; jury absent.)

THE COURT: I assume you are ready to go ahead?

MR. MARTIN: Gentlemen, your Honor. Yes, your Honor.

(Jury present.)

THE COURT: Ladies and gentlemen, we are about to proceed and hear some witnesses for the defense, but before we do so, I want to call to your attention a ruling I made some time ago, at least prior to today, but I neglected to call to your attention.

You remember that early in the trial there was certain evidence offered by the Government and the Court indicated that it would take this evidence subject to connection, was the phrase used by me, if you may remember.

I have told the lawyers and litigants several days ago, I think it is now, that that evidence is deemed connected and all I meant by that was that that evidence iskept in the record to be considered by you in your deliberations if you care to.

I will instruct you about this again and more fully in my charge, but I just wanted to let you know about that now.

Now, Mr. Martin or Mr.Stillman, which --

MR. MARTIN: I call Carol Raimondo.

C A R O L R A I M O N D O, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mrs.Raimondo, what is your present occupation?

A I am a CPA.

Q Do you still practice as a CPA?

A Yes, I am self-employed.

Q Directing your attention to the period of 1969, by whom were you employed at that time?

A I was employed at that time in the Washington office of Peat, Marwick, Mitchell.

Q Did you know Joseph Scansaroli and Tony Natelli at that time?

A Yes.

Q Do you see them here in the courtroom?

A Yes, I do.

MR. MARTIN: The record should reflect the identification.

Q Now, directing your attention to 1969, what was your position at Peat, Marwick & Mitchell?

A Well, during the early part of 1969 I was a tax specialist and later in that year I was a supervisor

with Peat, Marwick, Mitchell in Washington in the Tax Department.

Q And during the spring of 1969, did you have any occasion as a tax specialist in Peat, Marwick's office to do any work with relation to National Student Marketing Corporation?

A Yes, I did. We did any number of things such as answering questions or inquiries, tax matters, but also principally at that time we were working with the completion of the corporate, Federal corporate and state corporate income tax returns for the fiscal year ended August 31, 1968, which had to be filed by the 15th of May of 1969.

Q Mrs.Raimondo, I will ask you, if you would, to try and keep your voice up as best you can. Try to talkto people in the back row there. That would be helpful.

You say that you reviewed the National Student Marketing tax return, is that correct?

A Yes, I did.

Q And that was the tax return for what period?

A The tax returns for the fiscal year of the company which started in September 1, 1967, through August 31, 1968.

Q Could you explain to the ladies and gentlemen of the jury how it is that in May of 1969 you were still

reviewing the tax return for the period ended August 31, 1968?

A Well, normally a corporation's Federal income tax return is due two and a half months after the close of its fiscal year. However, it is quite often the case that the information is not available to file a complete return by the due date, so the Government has an arrangement whereby you have an extension of time up to a maximum of six months beyond the original due date, which in the case of August 31, 1968, is May 15, 1969.

Q Now, what was your function with regard to this tax return?

A I reviewed the tax return after it was prepared.

Q In the course of reviewing the tax return, did you make any notes at all?

A Yes, I did.

MR. MARTIN: May I have this marked as Defendant Natelli Exhibit O.

xxx (Defendant Natelli Exhibit O was marked for identification.)

Q Would you look, please, at Defendant Natelli's exhibit O and tell me what that is?

A It is a copy of the review memorandum with my notes that I made while I was reviewing the tax return.

MR. MARTIN: Can I have this marked as P, please.

xxx (Defendant Natelli Exhibit P was marked for identification.)

Q I show you what is now Defendant Natelli Exhibit P for identification and ask you if you can tell us what that is?

A It is a copy of the Federal corporation income tax return for the fiscal year ended August 31, 1968.

Q That is the return that you wre working on at the time?

A That's right.

Q Now, in the course of your review, did you have any occasion to raise a question about a provision for deferred taxes that the company had reported on its financial statements issued for the period August 31, 1968?

A Yes. In my review notes I wrote a note questioning whether or not the large -- the provision, the amount of deferred tax provision that was provided at August 31, 1968 was necessary.

Q Try, if you can, ladies and gentlemen of the jury, on their account, wouldyou try as best you can to explain to them and to me what it is -- what a provision for deferred taxes on a financial statement is and how the tax is ultimately reflected on the corporation's tax returns,

if they differ from that and how the one relates to the other.

A Well, okay.

A provision for deferred taxes is indicative of the fact that a company may report its income for accounting purposes, that is, for financial statement purposes, on a different basis than it reports the income for income tax purposes and ultimately the income reported is the same, but if you will, the difference is a timing difference of one year to another. So in the case of a provision for deferred taxes, it would mean that there was income reported for accounting purposes which had not yet been reflected in the corporation's tax returns but would be at some future fiscal year.

MR. MARTIN: At this point, your Honor, I am going to offer Natelli Exhibits O and P for identification into evidence. I am showing them to Mr.Velie.

MR. VELIE: Mr. Martin, are you offering any portion of this other than Note 23?

MR. MARTIN: That is the only part I referred to. I have no problem in limiting it to that.

MR. VELIE: No objection to the portion of O which relates to Note 23.

I just need one second for the other one. I

have no objection to P.

xxx (Defendant Natelli Exhibits O and P were received in evidence.)

Q Looking at Defendant Natelli's Exhibit O, would yhou tell the ladies and gentlemen of the jury what notation you made on that document in early May of 1969 as best you can recall?

A May I just read it?

Q Yes.

A It says no possible deferred tax liability problem. Paragraph 44 of Opinion 11 would seem to indicate that the large deferred tax liability was not necessary.

Q Did you have occasion to discuss the opinion yoau expressed there that the deferred tax liability might not be necessary with anyone else at Peat, Marwick & Mitchell?

A Well, my review ~~noted~~ noted that Gene, who would be Gene Holloway, the partner in charge of the tax department, has discussed with Tony, Tony Natelli, indicating that I went to Mr. Holloway with this question and discussed it and then he went to Mr. Natelli to discuss it with him.

Also in a working relationship, I worked with Joe Scansaroli on the question itself. I would have walked down the hall and, you know, that type of thing. I might walk down the hall to talk to Joe rather than go

through any chain of command.

Q When you discussed this with Mr. Holloway, who was your supervisor, did he agree or disagree with the conclusions you had reached there?

MR. VELIE: I am going to object to that as being hearsay.

THE COURT: Yes, I will sustain that.

MR. MARTIN: Might I say, your Honor, I think it relates to your Honor's subject to connection ruling as to Mr. Natelli and Scansaroli during the course of the Government's case.

THE COURT: I am sorry. I don't see it that way at all,with all duerespect. I see it quite differently.

Q Subsequent to talking to Mr. Holloway, did you have occasion to discuss this matter with Joe Scansaroli?

A Yes, we discussed it. I can't pinpoint any particular time of conversation but we discussed the general subject of deferred taxes of National Student Marketing, any number of times. We worked on it.

Q Do you recall having discussions with Mr. Scansaroli concerning the deferred tax provision that had been set forth in the financial statements for August 31, 1968, which were published by the company in the fall of 1968?

A We talked about that, yes.

Q Again, Mrs. Raimondo, if you try and keep your voice up and would you tell us as best you can recall the substance of the conversation that you had with Mr. Scansaroli on that subject?

A Well, as best I can recall, I raised with him the same question that I wrote down in my review memorandum, that is, from the standpoint of Opinion 11, which I am referring to Opinion 11 of the Accounting Principles Board, was the way that that calculation was made at August 31, 1968, if you will, in line with that opinion. And it was my thought that perhaps it was not that because some of the things that were said in the opinion that perhaps it should have been calculated in a different manner.

Q And did you and Mr. Scansaroli come to in those discussions, a conclusionas to that question.

A Well, I can't say that I can recall us ever coming to a conclusion per se. It would have been more of the type of thing that me raising the question -- it would be more like he would be -- he would be more inclined, because it was more my field, the deferred taxes in the Tax Department, he would be more inclined to kind of question me and test my theory but basically, you know, to -- if I or other people who were tax oriented along with it perhaps to think that that was so, rather than, you know, rather than -- you know, kind of test the theory on each other, but I think I probably would have taken more of a little bit of a leading role since I raised it to begin with.

Q What you are saying is you were the expert in this area, not Mr. Scansaroli, so he would be relying on your expertise more than he yours, is that correct?

MR. VELIE: Would be or does she recall that he did? I object to thatquestion.

THE COURT: I think the intention of the question is clear. Is that your recollection of how it went?

THE WITNESS: Yes, that is.

Q And do you recall what the conclusion that you received with Mr.Scansaroli was as to whether or not there had

been an erroneous provision for deferred taxes set forth in the original report for the period ending August 31, 1968?

A I would say we got to that conclusion, yes.

Q And what was that conclusion?

A That the liability as provided had not taken into account the impact of an item called the loss carried forward as it could have done or should have done and that if you took that into account, you would come up with a different result.

Q How did that different result -- was it a large or small difference as best you can recall?

A Well, it would have substantially eliminated the need for any deferred tax liability, almost all of it would not have had to have been provided.

Q During the timeyou were working on this problem, did anyone -- Mr. Scansaroli or Mr. Natelli, suggest to you that you should do anything other than try and resolve this problem fairly and honestly?

A No.

Q You have met Mr. Velie?

A Yes.

MR. MARTIN: He has some questions.

MR. VELIE: How shall we proceed, your Honor?

THE COURT: If Mr. Stillman has some questions, I

suggest he pose them now and then you come up last.

MR. STILLMAN: I have no questions.

THE COURT: However, before you begin, Mr. Velie, let me see if I understand you, Mrs. Raimondo.

BY THE COURT:

Q Perhaps my difficulty is in not understanding the figure in question but your conclusionwas independently that there was a loss carry over provision in the figure which should have been factored in which in turn, if it were, would have practically wiped out this figure for deferred tax liability, which somebody had proposed?

A That's right.

Q Is that right?

A That's right.

Q Well, doyou know whether or not your view of the matter was ultimately accepted in the return that was filed?

A Well, this question had no impact on the tax return at all.

Q So it really had nothing to do directly with the return which is now in evidence, what we call Natelli's Exhibit P?

A Right. In other words, I raised a theoretical question which didn't affect the tax return which I saw while I was doing the tax -- reviewing the tax return.

Q Do you recall independently how much deferred tax liability, if any, was referred to in the tax return itself?

A It's right on the face of the return.

Q How much is that amount?

A $170,650 Federal and $20,119 of State.

THE COURT: Thank you. Forgive me, gentlemen. Go ahead.

xx CROSS EXAMINATION

BY MR. VELIE:

Q Excuse me one second, Mrs. Raimondo. I am looking for a piece of paper. I will be right with you. Good afternoon, Mrs. Raimondo, I'm going to place before you Government's Exhibit 3 in evidence.

I want to show you apiece of paper in there, page 1915, and ask you if this is your piece of paper? Actually, it is a Xerox, isn't it?

A Yes, that's my handwriting.

Q That's your handwriting?

A Yes.

Q Why don't you hold that in front of you for a minute. That's a memorandum you prepared, is it not, sometime in 1969, is that correct?

A Yes.

Q Do you want to take a minute to read it?

A Do you want me to read it?

Q Read it to yourself just to make sure you know what we're talking about.

You have read it?

A Yes.

Q In your memory you conclude, don't you, that at August 31, 1968, National Student Marketing had changed its accounting system to a new system for reporting unbilled accounts receivables, is that correct?

A Yes, that's right.

Q Previously they had had some contracts in progress accounting but previously they used to use actual costs spent which could be found on the company's books in recording their expenses, is that correct?

A I think so but I really don't remember. I don't talk in the memorandum about how they recorded their expenses and I really don't remember after all this time.

Q Well, read to yourself this line here which says expensed costs and incurred.

Now, in English that means they were down on the books, the costs, asthey spent the money, is that correct?

MR. MARTIN: Objection, your honor.

MR. VELIE: It is accounting.

THE COURT: What puzzles me is Mrs. Raimondo stated she cannot recall the method which NSMC previously used.

Q Do you see something in that memorandum which refreshes your recollection about what you once knew about it?

A Right. There is this one line about costs incurred but the principle thrust of it was the income side of it as opposed to the cost side.

Q Am I right in saying the way they used to do your accounting for contracts in progress used to be to record as costs on those contracts in progress the money that they had spent?

A That wouldn't be entirely accurate because -- I used the word incurred which is probably better because money spent, which would indicate a strictly cash basis, whereas if you would go ut and order supplies, you would still have a liability to pay that.

Q So it is either cash or they -- somebody because they have been billed --

A Accrual, yes.

Q Those are not anticipated or estimated costs?

A They are known in a sense but perhaps not paid for yet.

Q Another difference that you noted was that they

used to require signed contracts and now, starting August 31, 1968, they were going to begin to use an accounting system in which they would record income at the point at which an oral commitment to sign a contract was deemed to exist, is that another change that you noted in your memorandum?

A Yes. The point of timing of when is a recognition of income point was changed, yes.

Q From when it used to be a signed contract and billed to when they got an oral commitment to sign a contract, is that the idea?

A I assume that's what I say here, yes.

Q Fine. Incidentally, it wasn't just you. You spoke to Mr. Scansaroli about that, isn't that correct, and he concurred in everything you said?

A Yes, he concurred in my analysis. The memorandum discussed it in the tax impact and this is what he is concurring with.

Q If you will bear with me for a minute, I would like to put something on the blackboard that may assist us here a little bit.

Let me just straighten out one matter I couldn't follow from your testimony. Did you actually sit down with pencil and paper in hand and work on work papers and recompute for the other department at Peat, Marwick and Mitchell,

accounting rather than Tax Department, did you actually sit down and compute what the new deferred tax number should be for them, is that work you did?

A I don't have any memory of ever having done that, no.

Q Have you ever seen a work paper of yours to indicate what you did?

A No, I haven't.

MR. VELIE: Gentlemen, I am going to refer to page 2531 of Exhibit 13 in evidence and put on the blackboard, if there is any chalk left here -- I am going to put on the blackboard entry number 2, the narrative portion which is this.

Based on subsequent facts it was decided to adjust three contracts entered into by Ron Michaels, number one, Clairol, number 2, Cheesborough, and number 3 Ban. It goes on to say this in effect is the same as a reclassification entry for report purposes.

I believe this is Mr. Scansaroli's page, it has been so identified by Mr. Oberlander here. The entry goes something like this. The three contracts total 678,562. And this is service revenue which is being written off.

MR. MARTIN: What's the page on that?

MR. VELIE: 2531. Mrs. Raimondo, you may have to

sit up from time to time to catch this. And then corresponding cost of service revenue is also being written off in the amount of 489,812.

The difference between these two numbers, you can calculate it if you like, to save time, is $188,750. This is being written off too, profit on these three particular contracts.

MR. MARTIN: I object, your Honor. This is a summation. It is not the testimony of this witness.

THE COURT: Well, I must agree I am concerned about the last phrase you just used. In other words, Mr. Velie, I don't see what this kind of thing has to do with cross examination of Miss Raimondo. She hasn't testified she had anything to do with any of this.

MR. VELIE: I am coming to this.

THE COURT: I hope you are coming to something that relates to the direct examination.

Q Am I right, Mrs. Raimondo, the difference between service revenue and the cost of service revenue is in fact the profit on the service revenue, is that correct?

A That's right.

Q And so that if this is a write off entry, then what is being written off is the revenue, the costs and the profit?

A Yes.

Q Do you happen to know how it came out that the deferred tax item which you first raised the question about, came out exactly to the penny the profit on those three contracts? Can you tell us anything about that?

A Well, it wasn't the same.

Q It wasn't? Well, can you explain to the jury, then, how this entry, instead of saying profit or retained earnings here, says provision for deferred --

MR. STILLMAN: Income taxes.

Q --income taxes and absorbs every penny of that loss.

MR. MARTIN: I object to the question, your Honor. Improper cross of this witness.

THE COURT: I am inclined to agree. In other words, Mr. Velie, she had nothing to do with preparing this particular page that I know of. If you want to ask her, why, you may but I don't think she made any entries on page 2351 of Government's 13.

MR. VELIE: That's correct, your Honor.

THE COURT: How in the world can you be asking her?

MR. VELIE: Very well.

THE COURT: I know the argument but you already

got evidence from which you can make the argument. The point I am making is, I agree with the objection. We don't have to raise it with this witness.

MR. VELIE: That's all I have.

THE COURT: Anything further, Mr. Martin?

MR. MARTIN: I have nothing further.

Thank you very much.

THE COURT: Thank you, Miss Raimondo, you may be excused.

(Witness excused.)

THE COURT: Given the hour, Mr. Light and ladies and gentleman, I think everybody in the case needs lunch. We will be back at 2:15.

(Luncheon recess.)

2:15 P.M.

(In open court;jury present.)

THE COURT: Now, Mr. Martin.

MR. MARTIN: Joseph Hearne, your Honor.

J O S E P H O. H E A R N E, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Hearne, what is your present occupation?

A I am an audit partner in theWashington office of Peat, Marwick, Mitchell & Company.

Q How long have you been associated with the Washington office of Peat, Marwick?

A Since 1966.

Q Do you know Tony Natelli?

A I do.

Q Joe Scansaroli?

A I do.

Q Directing your attention to the period early October 1968, what was your title at Peat, Marwick & Mitchell at that time?

A I was a manager on the audit staff, Peat,Marwick, Mitchell.

Q At that time how long had you known Tony Natelli?

A Approximately six to eight weeks.

Q Am I right that he had just come back from Italy to become the managing partner of the Washington office of Peat, Marwick & Mitchell during that summer?

A That is correct.

Q Directing your attention to the period early October 1968, did you have occasion to have a conversation with Mr. Natelli concerning the work he was doing with relation to National Student Marketing Corporation?

A Yes, I did.

Q Where did that conversation take place?

A In his office.

Q Who was present?

A Mr. Natelli and I.

Q Will you, sir, tell us as best you can what Mr. Natelli said to you about the work that he was doing on the National Student Marketing Corporation engagement?

MR. VELIE: Can we fix the date of this conversation?

Q What was the date of this as best you can recall it, sir?

A It was either the last week or two of September or the first week or two of October.

MR. VELIE: 1968,Mr. Hearne?

THE WITNESS: Yes.

MR. VELIE: Your Honor, strictly speaking, this is hearsay. It is a self-serving statement of the defendant.

THE COURT: This is potentially a hearsay problem, I agree.

MR. MARTIN: Your Honor, I thinkhearsay is relevant when it goes to state of mind. We are dealing with a charge of knowing wrongdoing, your Honor.

THE COURT: I know what we are dealing with. In any event, I will take it subject to further ruling if necessary.

Q Can you tell us, sir, what Mr. Natelli said to you on that occasion?

A The conversation followed a request by me to meet with Mr. Natelli on another matter during the day --

MR. VELIE: Objection as not responsive. He was asked what was said between the parties.

THE COURT: Yes.

Q Just tell us what Mr. Natelli said to you, sir, about the National Student Marketing engagement without getting into the event that brought you into his office on that day.

A All right. Mr. Natelli said that he and Mr.

Scansaroli had been discussing during the afternoon matters in connection with National Student Marketing. Specifically, as I recall, there were two matters under discussion, one being a problem in connection with the confirmation of certain contracts of National Student Marketing. For some reason the confirmation process of written communication was being modified in a manner in which Mr. Scansaroli was to telephone key officials of the client in order to confirm the contracts outstanding.

The second area that he related to me was a researching of the appropriate method of recording income on certain contracts of National Student Marketing.

Q What did he say on that subject that you recall?

A They had considered the appropriateness of three methods of treating these contracts, one being to expense all costs incurred to date and recognize no income.

The second to defer all costs incurred and thirdly, to utilize a percentage of completion method of accounting.

During this conversation he indicated that in his judgment the expensing of all costs incurred to date was unduly punitive inasmuch as this was a fairly new company that had committed a substantial portion of its total resources to the establishment of the capabilities to carry out these contracts and the programs that resulted in these

contracts and that he didn't feel that was fairly reflecting the activity of the company to that point in time.

The second alternative of deferring cost, they had investigated and because of the lack of detail as to the buildup of the specific costs on the individual contracts, they could not follow that approach and again there was a problem further in that he did not feel that that would clearly or fairly reflect the activities of the company to that point in time.

He had, therefore, concluded after his research and discussion with Mr.Scansaroli that the appropriate method should be to recognize the benefit of the effort that had been expended by the company to that point in time and that he had concluded that he would follow the percentage of completion method of accounting.

Q Did Mr. Natelli ask you not to tell anybody about the method of accounting he was using for National Student Marketing?

A Absolutely not.

Q Did Mr. Natelli in any way during the course of that conversation indicate to you he was doing anything other than trying to make an honest judgment as to how to solve the particular accounting problem?

A No.

MR. MARTIN: I have no further questions, your Honor.

THE COURT: Mr.Stillman?

MR. STILLMAN: None, your Honor.

MR.VELIE: Your Honor, if you will bear with me for a moment.

CROSS-EXAMINATION

BY MR. VELIE:

Q Mr. Hearne, you are a partner at Peat, Marwick, Mitchell & Company, is that correct?

A That's correct.

Q You are, of course, Mr. Natelli's friend as well, is that the idea?

A I am a business associate of Mr. Natelli.

Q Do you like him?

A As a business associate we have a very satisfactory relationship.

Q You don't want to see him get in any kind of trouble, do you?

A None that he doesn't deserve.

Q Tell me, Mr.Hearne, do you happento recall if Mr. Natelli told you why it was that they were going to use telephone confirmations?

A The telephone was not in sufficient depth for

him to give me the reason, merely that he had a problem with the written confirmation and that that was their solution to the problem. He did not indicate the nature of the problem.

Q Did Mr. Natelli then-- see if this helps you. Was there any telling you that Mr.Scansaroli or Mr. Natelli felt that they couldn't confirm in writing -- let me break here for a second.

You are familiar, of course, with auditing confirmations which are done in writing, is that correct?

A I am familiar with that procedure, among others.

Q That is a traditional method, isn't it?

A I wouldn't say traditional. Customary is probably a more accurate word.

Q It is less usual, is it, to confirm by telephone?

A Less usual simply because it is more cumbersome. It is easier to make 100 written letters than it is 100 telephone calls.

Q Did Mr. Natelli tell you that the reason they didn't confirm in writing this time but used the telephone instead was that he and/or Mr. Scansaroli felt that this was a special type of situation. The salesmen were dealing with various clients and they were at the point that if they pushed the clients too hard, the clients would stick them

in the back some place and say, we are busy, we don't have time to sign contracts, that they, Mr. Natelli and Mr. Scansaroli felt it was a touch and go situation between the account executive and the people he was dealing with and that in many cases dealing with the ad agent, they didn't want to push the ad agent too hard because the agent had some power as to who would in the future do the advertising, did he tell you that?

MR. MARTIN: I am objecting to the question. It is argumentative. It is not based on any facts in evidence that I have heard, your Honor.

THE COURT: I am going to sustain the objection as to form for another reason. I think it might be useful if you broke this down. You covered quite a bit of ground there and in fairness to the witness to begin with, I think if you can break it down, it would help.

Q Did they tell you that, in short, they were confirming in this fashion some two months after the audit year had closed?

Do you understand that the audit year had closed two months before?

A I do now. I am not sure that I did then.

Q Mr. Natelli didn't tell you that, is that the

idea?

A If I might explain, I would give you the context in which these comments were made which I started to do.

Q Why don't you.

A I requested to see Mr. Natelli on a different matter during the normal business day and he was not available and because of the urgency of the matter, I waited around after hours until he was available to talk with me. We concluded our business that I requested to see him on and at the conclusion of that conversation he apologized for keeping me waiting and in explaination for the delay, made these comments, which were not in great depth and did not go into the detail that you elaborated in your question.

Q Fine. Let me just ask you. Did you have the impression from what he was telling you that he was telling you it was two months after the year had ended, this problem of confirming basically?

A I don't recall his mentioning the timing of the year end.

Q Do you recall if he mentioned to you a concern on the part of the company that if written confirmations were used, the company might lose the business, that is, that the business would be diverted elsewhere, National

Student Marketing wouldn't get it?

A No.

Q He didn't tell you?

A He simply stated there was a problem with writtenconfirmation and they had concluded that this was the method they were going to follow. Substantially all of the conversation dealt with the other accounting issue of income recognitions.

Q And that took place, you say, in October of 1968?

A To the best of my recollection.

Q Is that the first you heard of this particular problem?

A Yes.

MR. VELIE: No further questions.

THE COURT: Any redirect, Mr. Martin?

MR. MARTIN: I have none, your Honor.

THE COURT: Thank you, Mr. Hearne. You may be excused.

(Witness excused.)

MR. MARTIN: Your Honor, may I just have a moment to confer.

(Pause.)

MR. STILLMAN: I call Arnold Berman, your Honor.

A R N O L D B E R M A N, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STILLMAN:

Q Mr.Berman, what is your occupation, sir?

A I am a certified public accountant.

Q Do you practice here in New York?

A I practice in New York.

Q Do you have a firm?

A I have a firm and its name is Arnold Berman & Company.

Q Would you do me the favor, Mr. Berman, and speak to me so that these ladies and gentlemen can hear everything that you have to say.

A All right.

Q Were you practicing in New York back in 1968 and 1969 in the firm of Arnold Berman & Company?

A Yes,sir, I was.

Q Did you firm number among its clients a company by the name of New England Travel?

A Yes, sir. Also known as AIFS, American Institute for Foreign Study.

Q American Institute of Foreign Study?

A For Foreign Study.

Q Could you briefly describe for the ladies and gentlemen of the jury the nature of the business of this particular client?

A They got together study groups, sent them to Europe by chartered plane. They sent these groups to various universities where they learned specialized subjects. In addition they had travel programs for part of the time.

Q Mr. Berman, did there come a time when you learned that your client was considering a business transaction with National Student Marketing Corporation?

A Yes, it was first brought to my attention by Mr. Walter, who said he had a conversation with Mr. Randall.

Q And Mr. Walter is Mr. Roger Walter?

A Mr. Roger Walter.

Q Did there come a time, Mr. Berman, when you learned that -- from Mr. Walther, that there was to be a transaction involving New England Travel and National Student Marketing Corporation?

A Yes, sir. I was involved with the negotiations.

Q On behalf of New England Travel?

A On behalf of New England Travel.

Q Directing your attention, Mr. Berman, to the period

between December of 1968 and February of 1969, did you have occasion to travel to Washington, D.C., in connection with this transaction?

A I did. Sometime between December and February, I don't recall when, I went to Washington to see -- to the offices of National Student Marketing where I saw Mr. Bernie Kurek.

Q And did Mr. Kurek have anyone with him?

A He had an assistant. I think his name was Mr. Buck.

Q John Buck, does that ring a bell?

A I think so.

Q Can you briefly tell to the extent you can recall, tell to the extent you can recall, tell the ladies and gentlemen of the jury what was said in the course of this conversation you had with Mr. Kurek?

A Well, I asked Mr. Kurek various questions about the financial operations of the company and about certain items on the balance sheet. Whatever questions I asked, he answered, and finally we focused on one particular item, contracts in progress. He gave me all the information that I asked except that I asked in connection with contracts in progress, I asked that I see the accountants.

Q And by the accountants, were you referring to the

National Student Marketing's outside auditors?

A I was referring -- yes. Peat, Marwick and Mitchell.

Q Did you leaveMr. Kurek's office that day?

A On that very day I went over to the offices of Peat, Marwick and Mitchell.

Q That's in Washington?

A In Washington.

Q Right across the street, as apparently we have learned, is that your recollection?

A I don't recall.

Q What happened when you got to the Peat, Marwick office?

A I was led into a rather small office and a gentleman was sitting behind the desk ready to answer my questions.

Q Do you remember the name of the gentleman?

A Well, I don't remember the name of the gentleman but I do remember that the gentleman who showed me the work papers was the gentleman who had written the material in it. At least the introductory material.

MR. STILLMAN: Mr. Scansaroli. Would you stand up a moment, please.

Q You and I have discussed this before, Mr. Berman. I take it you don't recall Mr. Scansaroli, that is, this person as being the person you saw that day, is that right?

A I can't picture in my mind -- Mr. Scansaroli is sitting behind the desk at that day. I only remember that the fellow I spoke to, the man I spoke to had an intimate knowledge of the papers and I was under the impression it was the man that had made up these papers.

MR. STILLMAN: Thank you, Mr. Scansaroli.

Q I would like to show you Government's Exhibit 3 in evidence, which has been identified as the special sales working papers at August 31, 1968 and will you tell the jury whether or not you can identify those work papers?

A I could identify that these are the work papers that I saw that day because I clearly remember the fact that they were on very large lines and that there were three items at the bottom.

This one, two, three business.

Q Did you have occasion -- did you have the opportunity on the occasion of this visit, to review those work papers?

A I did. I didn't -- I did not go through them thoroughly. I reviewed them and read some of the introductory material.

Q Did you have occasion to discuss with the person who gave you those work papers anything concerning their contents?

A We discussed the method of accounting and how it

was applied.

Q Did you receive answers to all the questions that you put to the person who was showing you the work papers?

A I did.

Q I believe you told us this, but just so I am clear on it, is there any question in your mind but that the person with whom you were talking was the person who was the author of the work papers?

MR. VELIE: Objection. That's been asked and answered.

THE COURT: Correct. Next question.

MR. STILLMAN: Is everyone satisfied --

THE COURT: I am, certainly, and I am asking you to put your next question.

Q Did you experience any difficulty in getting any explanation to the questions you put concerning the contracts in progress when you were at Peat, Marwick's office?

A None whatever. I felt as if all the information that I requested was given to me.

Q And after you got the information that you sought, did you leave the office that day?

A I did.

Q To the best of your knowledge, did there come a time when New England Travel entered into the transaction

which Mr. Walther had been discussing with Mr. Randall?

A Yes, sir, they did.

Q By the way, Mr. Berman, prior to this particular transaction, did you know -- prior to the transaction that you have told us about, did you know either Mr. Natelli or Mr. Scansaroli?

A Did I know them?

Q Yes.

A I had met Mr. Natelli.

Q In connectionwith the transaction?

A In connection with the negotiation leading up to the final transaction.

Q As happenstance would have it in life, you and I know each other for purposes totally outside this proceeding, isn't that right?

A Exactly right.

MR. STILLMAN: Thank you, sir. I have nothing further.

THE COURT: Mr. Martin?

MR. MARTIN: Nothing.

xx CROSS EXAMINATION

BY MR. VELIE:

Q Good afternoon.

A Good afternoon.

Q We have met before?

A Yes.

Q In fact you favored me with an interview during the lunch break?

A Yes.

Q See if you can fix the date of that conversation you had with whoever it was that showed you Government's Exhibit 3.

That was before the February closing of the NAT acquisition, is that correct?

A NET acquisition? I can't recollect. I tried to look for diaries, in fact at your suggestion, as to what I had in writing and I had very little.

Q So you can't -- let me ask you.

Can you or can you not tell us whether the conversation you had was before or after NET was acquired?

A It was before NET was acquired.

Q Was it during the course of the negotiations that you were doing your job, is that the idea?

A I can only remember it was sometime before. Some time between December and February.

Q Sometime between December and February?

A I don't recall.

Q Did whoever it was who showed you those papers

tell you that the 1.7 million dollars in contracts which were discussed in those papers, were confirmed by the following method.

I will just ask you separately. Do you recall being told that some of these contracts were confirmed by calling up National Student Marketing's printer on the telephone?

A No, I didn't ask any of those questions.

Q And you didn't get an answer like that either?

A That's right.

MR. STILLMAN: He said he didn't ask any of those questions.

MR. VELIE: I asked a second question. He answered it.

THE COURT: Next question.

Q Did he tell you, whoever that person was, that written confirmations were not used because the company was concerned it might lose the business which was represented by that $1.7 million in sales?

A Sales?

No, I didn't ask that question.

THE COURT: In other words, you didn't ask any questions about contracts which might have been referred to in these work papers --

MR. STILLMAN: Sir, sorry, your Honor, I can't hear you.

THE COURT: I haven't spoken loud enough.

Q In other words, as I understand your testimony, Mr. Berman, you didn't raise any questions about accounts receivable or fixed fee contracts --

A No, not exactly.

Q Oh, you did --

A We discussed the method and how it came about, but I did not ask how they were confirmed physically.

THE COURT: You didn't ask anything about confirmations, if any, about such accounts receivables?

A No, sir.

THE COURT: Did you ask about the method of accounting as such?

THE WITNESS: That's right.

THE COURT: What were you told was the method of accounting?

THE WITNESS: To take -- well, the method of accounting that was reflected on the balance sheet.

THE COURT: What was that?

THE WITNESS: That was to -- for all contracts, for which commitments were received, to take into account a portion that would correspond to the percentage of work

done.

THE COURT: Which is sometimes referred to in your profession as percentage of completion accounting, right?

THE WITNESS: It is parallel to it.

THE COURT: Parallel to it. Thank you.

Q You said percentage of the work done.

Did you understand the work of National Student Marketing to be delivering promotional materials to young people on campuses?

A Yes, I did.

Q Did you receive an impression from the person you spoke to that the percentage of completion being recorded as income was a percentage of the number of promotional pieces of literature or the like which had actually been delivered by campus representatives as a percentage of the total amount that they were going to deliver in the life of the contract?

A No, sir.

MR. STILLMAN: Mr. Velie worked hard to get that question out. I object to it.

THE COURT: I am afraid I would agree. I think from your own viewpoint, you ought to rephrase that.

Q Did the person with whom you were speaking tell you that on December 9, 1968 there was so much concern about the uncollectibility of these particular contracts in process

that a meeting was held between Peat, Marwick and Mitchell and Company --

MR. STILLMAN: This is outrageous for him to do this. He knows there was no conversation. He is the Government of the United States in this courtroom, not just some lawyer from down the street. I object to this.

MR. VELIE: Can we have that remark stricken, please.

THE COURT: I will take this as an objection which I will sustain for quite another reason advocated by the objector.

I don't think that we have to ask questions like that. I certainly will permit questions which are much briefer and to the central point involved without going into any conversations or meetings or whatever.

Do you see the point I am making?

MR. VELIE: Yes.

THE COURT: Try again.

Q Were you told that Peat, Marwick and Mitchell's representatives were so concerned about the uncollectibility of these very contracts that they would require that contracts to be recorded would have to be firm enough to be confirmed in writing by the year end?

A No.

MR. MARTIN: Objection.

THE COURT: Sustained.

Do you recall any evidence of concern by this unknown individual at Peat, Marwick's offices regarding confirmation of any accounts receivable?

THE WITNESS: No, sir.

THE COURT: All right. There was no evidence of any concern.

THE COURT: You have answered me, no.

Next question.

Q Would you say there was no evidence of any concern, is that fair to say?

A Yes, sir.

Q Yes, there was no evidence of any concern?

A Yes,sir. There was nothing from what was said that would concern me.

MR. VELIE: Thank you.

THE COURT: Mr.Stillman?

MR. STILLMAN: Nothing further.

THE COURT: Thank you. You may be excused, sir.

(Witness excused.)

MR. MARTIN: Mr. Earle.

MR. VELIE: Your Honor, before the witness comes up, may we approach the bench?

THE COURT: Let's get him out here and sworn and if it is very important, we will go to the side bar.

V I C T O R E A R L E, called as a witness bythe defense, having been first duly sworn, was examined and testified as follows:

THE COURT: Sir?

MR. VELIE: I would like to come up for a brief moment.

THE COURT: Do you mind if we get some clue as to what this is about?

MR. VELIE: It is a point of personal privilege, if I may, your Honor. I would like to take it up.

THE COURT: That is somewhat unique. We will take a brief side bar. Excuse us.

(At the side bar.)

MR. VELIE: Your Honor, my application is just this: It is almost time for the afternoon break. Defense counsel have done me the courtesy of telling me a little bit in advance who their witnesses were so I can have my transcripts ready and look like a lawyer when it is time to cross-examine. Unfortunately, they told me four names, none of which was Mr. Earle for today. I would like ten minutes to look at his transcript. That is the personal matter I speak of.

So that if we could take our break either before he testifies on direct or immediately after, let me have a look --

THE COURT: We will take it after we hear from him and break.

MR. MARTIN: I will do it either way, Judge.

THE COURT: Let's take it after the direct.

(In open court.)

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr.EArle, what is your present occupation, sir?

A I am a lawyer.

Q For whom do you work?

A I am general counsel of Peat,Marwick, Mitchell & Company.

MR. STILL: Your Honor, because I have such a loud voice, I must have poor hearing.

THE COURT: I think Mr.Earle may have a cold.

THE WITNESS: I think I have a frog, your Honor.

THE COURT: We will be patient.

Q Mr.Earle, will you talk to the people in the back of the room.

A I am general counsel for Peat, Marwick, Mitchell & Company.

THE COURT: Would you like a glass of water?

THE WITNESS: That would help, your Honor.

Q Would you tell us your background, where did you go to law school, sir?

A I am a graduate of Williams College and Columbia Law School.

Q Subsequent to Columbia Law School, what did you do?

A I spent one year as law clerk to Judge Leonard Moore of the United States Court of Appeals for the Second Circuit.

Then spent seven years associated with Cravath, Swaine & Moore.

Q A large firm in New York City?

A Yes.

Q After leaving Cravath, you joined Peat, Marwick & Mitchell?

A Yes.

Q Directing your attention, sir, to the period October 31, through November 3, 1969, were you the general counsel of Peat, Marwick, Mitchell?

A Yes.

Q And were you, as general counsel of Peat, Marwick, Mitchell consulted at that time concerning a comfort letter that was being issued or to be issued to National Student Marketing Corporation, and Interstate National Corporation?

A Yes, I was.

Q I show you, sir, what has been marked Natelli Exhibit K. I ask you, sir, if you can identify that?

THE COURT: I believe that it is in evidence as Natelli Exhibit K, correct?

MR. MARTIN: Right, your Honor.

A I believe this is the comfort letter along with a covering letter to Mr. Epley and a further covering letter to members of the board of directors of National Student Marketing and Interstate Corporation.

Q On October 31, 1969, which was a Friday, was that the day that you first heard about this -- any problem relating to this comfort letter as best you can recall?

A Yes.

Q Where physically were you?

A I was home that day. I was taking a day of vacation.

Q Who did you talk to on that day about this subject?

A I was called by Tom Holton who was a partner in our professional practice, in the firm's professional practice department.

He called me from the firm's executive office in New York.

Q Do you know where Mr. Natelli's office was at that time?

A In Washington.

Q Did you on that day or any time prior to the time this document, Natelli Exhibit K was mailed, speak directly to Mr. Natelli?

A No, I didn't. Not in connection with that matter.

Q Natelli Exhibit K says, sir, in the last paragraph, "As indicated in the last paragraph of the transmittal letter, we have consulted with our legal counsel and have been advised that we should send each of you copies of the enclosed letters and take no further action regarding this matter unless subsequent developments dictate otherwise."

Were you, sir, the legal counsel referred to in that letter?

A I believe so, yes.

Q And was it your decision to take no further action and to send your comfort letter to the members, each member of the board of directors of each of those two corporations?

A Well, it was. I qualify that to say that like any lawyer I make recommendations but in this case my clients certainly followed my legal advice.

Q Will you tell the ladies and gentlemen of the jury what was the basis of your recommendation?

MR. VELIE: Objection. Mr. Earle's interesting legal conclusions after October 31 should not concern us here. He said he hasn't talked to Mr. Natelli about this letter. I see no basis for getting into what the lawyer for Peat, Marwick & Mitchell was thinking about.

THE COURT: Well, I am troubled on another score. Maybe you have the same thing in mind, but I would put it differently. I don't see the relevance to this case.

MR. MARTIN: Let me go at it another way, your Honor.

Q Was one of the matter that was discussed prior to the time this letter was prepared whether or not Peat, Marwick, Mitchell should bring these events to the attention of the Securities andExchange Commission?

MR. VELIE: Who is talking to whom and when?

THE COURT: Yes, I am sorry, Mr. Martin. This is very confusing. I don't understand this at all.

MR. VELIE: I believe we have no conversations with Mr. Natelli.

THE COURT: Mr.Velie, I just agreed with you, in effect. You don't have to add anything. You are going to have to ask something else because this makes no sense on the present state of the record.

Q In Exhibit K it says, did it not, sir, that Peat, Marwick would take no further action regarding this matter. Had other action been discussed between you and Mr. Holton?

A Yes.

MR. VELIE: Objection to what this witness is talking about with Mr. Holton.

THE COURT: I will allow a yes or no answer.

A The answer is yes. It was discussed on Friday, October 31, the possibility of other action.

Q Was one of the other actions discussed, the possibility of --

MR. VELIE: I object to leading.

THE COURT: We don't like leading, particularly of a witness such as Mr.Earle. I think the real problem here is quite different than is being adverted to for the moment, and I think the sensible thing to do, it is a good time to take the afternoon recess.

You gentlemen remain and we will get into what this is really about, and then I will rule on it. Ten minute recess, ladies and gentlemen.

(Jury left the courtroom.)

THE COURT: Now may I suggest the obvious, Mr. Martin,. Just put direct questions to Mr.Earle. He needs no guidance or words from you as to his answers, you know that. Just ask whatever it is and then if the Government wants to object after it is all over, I will rule on it.

MR. MARTIN: May I make an offer of proof?

THE COURT: We have Victor Earle here. I know from experience he is very articulate. I understand him very well. Go ahead. We will voir dire him. It shouldn't take very long.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr.Earle, what other courses of action were discussed with Mr. Holton on that occasion?

A We talked about the possibility of communicating with the SEC.

Q What was the basis, sir, of the decision not to communicate with theSEC?

A Primarily the timing., By thetime the events were in the posture where we could communicate with the SEC, it was five o'clock on Friday and we decided we wouldn't reach the chief accountant at the SEC.

Q Was there any discussion about contacting the SEC the following Monday?

A Yes. I decided to think about it on the weekend and come to a conclusion over the course of the weekend, which is what we did.

Q What was the reason for the conclusion that you reached, sir?

A It was a legal reason. I decided it would be

a law violation to communicate with the SEC.

Q What type of law would that violate?

A Well, I felt it would violate the Illinois statute which applied at least to Interstate Corporation which was domiciled in Illinois which prohibits accountants communicating confidential communication to third parties. New York doesnot have a similar statute, but the AICPA Code of Ethics applies to accountants in New York and as well as the New York State Code of Ethics and both of those Codes would have been violated in my view.

So I felt that the alternative appropriate procedure would be to communicate with both boards of directors which had -- both boards having outside members and let them act or not act, as they saw fit.

Q In coming to this decision, before you reached that decision, did anyone, Mr. Holton or anyone else ever express any concern that if Peat, Marwick, Mitchell were to go to theSEC, Mr. Natelli might have some problem personally?

A No, nothing of that kind. Mr. Holton was communicating with Mr. Natelli all that afternoon. I didn't because I was home.

THE COURT: Mr. Martin, tell me something. What was it that you -- going to the SEC about what?

THE WITNESS: Your Honor, I was very troubled. I thought I had been misled, the firm had been misled because during the various telephone conversations back and forth between Mr. Holton and Mr. Epley, and Mr. Holton, and Mr. Natelli and Mr. Epley, and occasionally back to me at home, it was made clear to me that the companies were considering closing a merger notwithstanding the fact that our information, that is, Peat, Marwick's information going to them was not the kind of comfort that was contemplated.

It contained adverse information, negative information. That they were contemplating closing notwithstanding that.

And I therefore suggested a Paragraph 8 included in our comfort letter which was being read to them over the telephone paragraph by paragraph, pointing out the significance of this factual information. I think the next to the last paragraph which was added, I haven't looked at this letter in a while, but it is -- it was the paragraph that -- the fourth from the bottom. It reads "Your attention is called, however, to the fact that if the aforementioned adjustments had been made at May 31, 1969, the unaudited consolidated statement of earnings of National Student Marketing Corporation would have shown a net loss of approximately $80,000.

"It is presently estimated that the consolidated operations of the company as it existed at May 31, 1969 will be approximately a break even as to net earnings for the year ended August 31, 1969."

That particular paragraph was added after discasion between Mr. Holton and Mr. Natelli and myself as a way of emphatically warning counsel for these companies of the significance of this adverse information.

And then I was called back and given to believe that they were still going ahead, although as I had warned Mr. Holton to warn them, they were waiting for our final letter and it still wasn't final. We then, at my suggestion, added the last paragraph, that is, the last paragraph to be added, which was that we urged them to consider not going ahead with the merger and resoliciting their shareholders on the basis of the revised information.

I was later informed by Mr. Holton that when he called in that final paragraph, they told him they had in fact been ahead. I was very angry. I felt I had been misled.

Frankly out of nothing else but emotion I was prepared to go to the SEC at that point, but it was five o'clock and I cooled off over the weekend.

THE COURT: I would see possibly the relevance

of this, if I understood clearly that the Government was going to argue directly or indirectly that somehow one of these defendants on trial should have known or should have advised that the -- either the parties to the merger or PMM itself, in some fashion,should go to the SEC, but I have never understood that the Government was arguing that.

MR. MARTIN: Your Honor, my point on that is there was testimony elicited during the cross-examination of Mr. Kurek that Mr. Natelli on this day did himself make that suggestion that they go to the SEC.

One of the logical questions that might arise is, if Natelli thought they should go to the SEC, why did they not. The purpose of this testimony is simply to show that the decision was that of Victor Earle and not Anthony Natelli.

THE COURT: All right. Now, Mr.Velie, what about that?

MR. VELIE: It is awfully collateral, your Honor.

THE COURT: Wait a minute. Wait a minute. Wait just a minute. From your point maybe, but I am not so sure it is from Mr. Natelli's.

MR. VELIE: Perhaps a question and answer might be helpful, your Honor.

THE COURT: A question and answer? I don't understand you.

MR. VELIE: We have the witness for voir dire purposes.

THE COURT: Of could we do. What I am interested in knowing, you can't, I take it, you don't agree with what Mr. -- you disagree with what Mr. Martin just said. Kurek did say something --

MR. VELIE: He said something like that.

THE COURT: So I suppose it is relevant to, and understandable from the defendant Natelli's point of view at least to indicate it wasn't his decision not to go to the Commission.

MR. VELIE: I don't understand that that decision was communicated one way or the other to Mr. Natelli. Mr. Natelli being a free agent on that day, he had a telephone in his office, before he heard from Mr.Earle might have done any number of things.

THE COURT: Wait a minute, please. I assume thatyou have to agree and understand that a man in Natelli's position, who is relatively new in this firm, wouldn't necessarily assume it to himself to go off without consulting his seniors, when counsel is concerned. I don't think that is very realistic on your part.

MR. MARTIN: I do intend to call Mr. Holton. The reason for calling Mr.EArle was simply because of his time problems, it would have made more logical sense to have called him after Mr. Holton. He has to be out of the country. That is the reason he was called out of order.

THE COURT: Let me find out from you, Mr.Velie. You seriously --

MR. VELIE: I think I know what Mr. Martin is driving at. I see some relevance to it.

Can we avoid the lengthy hearsay discussions between this witness and Mr. Holton, however, and simply --

THE COURT: It won't be hearsay if Holton is going to testify.

MR. VELIE: I suppose that would cure that. I think what the jury needs to hear here is simply the conclusion that they --

THE COURT: Listen, you want to object on a question by question basis, you are still free to do so. I understand that. Basically I think that the defense is entitled to make the point. Why don't we take five minutes to recoup and then I think you can move swiftly to a climax, an you not, Mr. Martin?

MR. MARTIN: Absolutely. I will be happy to

ask leading questions that will get us to the point --

THE COURT: No, Mr.Velie has got to be supported on that. Particularly with Victor Earle. If we didn't know Victor Earle, I might be sympathetic to you. He doesn't need any leading.

(Recess.)

(In open court; jury present.)

THE COURT: Now, ladies and gentlemen, I think we are ready to go forward and do you want to pick up or do you want to restate the question we interrupted on.

MR. MARTIN: With a fresh start maybe we will do a little better, Judge.

BY MR. MARTIN:

Q Do you recall, Mr.Earle, what the discussions were that you had with Mr. Holton on Friday, October 31, 1969?

A Well, we had a series of telephone conversations, three or four during the course of the afternoon. Would you like me to give you the substance?

Q Yes, if you would.

A The first, which was early afternoon, alerted me to the fact that there were these two companies, about which I had -- I knew nothing. National Student Marketing and Interstate Corporation, which were about to close that afternoon a merger and that our Washington office was in the process of delivering a comfort letter which contained adverse information, in other words, information that was negative to the National Student Marketing Corporation of a material nature.

Q So the jury will understand, does that mean information that is ultimately contained in the letter which is before you?

A Yes. It is factually set forth. The reason Mr. Holton was consulting with me, counsel, was that he was concerned that the companies and their counsel were not reacting to this information. They were planning to go ahead with the merger in any event.

And so I suggested that he call back and get opinions from the two sets of law firms involved to the effect -- legal opinions -- to the effect that it was appropriate to close the merger notwithstanding the comfort letter, would contain this adverse information.

In a subsequent telephone call, he told me that he

had been speaking with counsel, Mr. Epley, counsel for National Student Marketing Corporation, the other counsel being present because the closing was actually in process at the White and Case office, and that Mr. Epley had explained that counsel did not feel they were in a position to give such opinions but nevertheless, they felt that it was appropriate for the merger to go forward and were merely awaiting the final delivery of our comfort letter.

The contents, the basic factual contents had been communicated by telephone apparently that morning.

In light of that, Mr. Holton and I discussed the possibility of additional language in the comfort letter which would be telephoned over to them and we discussed a paragraph which is the fourth paragraph from the bottom on the final page.

Q Would you read that paragraph so the jury knows what you are referring to?

A It reads as follows:

"You attention is called, however, to the fact that if the aforementioned adjustments had been made at May 31, 1969, the unaudited consolidated statement of earnings of National Student Marketing Corporation would have shown a net loss of approximately $80,000. It is presently estimated that the consolidated operations of the company as it existed

at May 31, 1969, will be approximately a break even as to net earnings for the year ended August 31, 1969."

Once Mr. Holton and I had concluded on that language, it was communicated by Mr. Holton to Mr. Epley and then sometime thereafter -- by now it is mid to late afternoon. Mr. Holton called me back and told me what the gist of his conversation with Mr. Epley had been.

Mr. Epley had felt that the language was gratuitous, unnecessary and apparently didn't dissuade him. We then talked about one final paragraph and we agreed upon the language which is contained in the third from the last paragraph.

Would you like me to read that?

Q Yes, please.

A Which reads as follows:

"In view of the abovementioned facts, we believe the companies should consider submitting corrected interim unaudited financial information to the shareholders prior to proceeding with the closing."

My last telephone conversation with Mr. Holton --

Q Before you go on, would the submission of additional financial statements to the shareholders involve a resubmission of information to the Securities and Exchange Commission?

A Yes.

Q Proceed.

A Close to five that afternoon, Mr. Holton called me back to say that when he had called some minutes before, I guess around 4:30 to Mr. Epley to communicate this language I just read to you, Mr. Epley told him that the closing had already occurred some moments before and that the various parties had left his office, some going back to Chicago and so on.

So Mr. Holton called me back and we decided what to do at that point.

Basically, because it was the end of the business day, I decided to do nothing but to think about it over the weekend --

Q Were there any discussions about what the alternatives you might pursue were?

A Yes, we considered communicating with the Securities and Exchange Commission right then and there but I felt that would have been futile because it was essentially 5 o'clock on a Friday.

We even discussed the movements of the chief accountant, the then chief accountant, Mr. Barr, who was known personally to Mr. Holton and who was a bachlor and who tended to leave on Fridays before 5 o'clock to go to the

University Club where he lived, so he felt it was futile to call him. If we would do that at all, we would do it during Monday. During the course of the subsequent weekend, we had subsequent discussions which included Mr. Holton and I believe Mr. Cummings as well, who is the head of the professional practice department.

On Monday these other letters that were sent out, which I referred to earlier, were the net result of -- that of my legal reasoning, essentially over that weekend.

Q Did you explain your legal reasoning to Mr. Holton?

A Yes, and Mr. Cummings.

Q What did you tell them, sir, as to whether or not Peat, Marwick and Mitchell should bring this matter to the attention of the Securities and Exchange Commission?

A Well, I told them that I had considered a statement on auditing procedure number 41 which, by a coincidence, had become effective that very Friday, the day before, before the weekend, and which dealt with the auditors' responsibility to communicate after acquired information to third parties.

The document was related to information coming to the attention of auditors after they had reported on audited financial statements, and I was aware of the fact that in an earlier draft of that statement, the American Institute considered imposing this obligation on auditors

even with respect to after acquired information on unaudited financial information but that had been dropped out.

So I felt that the plain negative implication of SAP 41 was, this being a breech of the historical rule of non-disclosure of confidential information, that only on the occasion of after acquired knowledge relating to audited financial statements could accountants disclose to third parties confidential communications that had come to them from their clients, between them and their clients. And that decision or that reasoning, combined with the existing law, the statute in Illinois which barred communications by an accountant to third parties and the American Institute's Code of Ethics and the New York State Society of Accountants Code of Ethics, which had similar provisions, led me to the conclusion that it would be both unlawful and unethical for the firm to communicate what had happened that Friday afternoon to the Securities and Exchange Commission or to anyone else unrelated to these two companies. I felt that instead the problem could be moved by communicating with both boards of directors, both of which included outside members.

And that was the gist of the letter of November 3 which was the following Monday signed by Mr. Holton to each member of the boards of directors of the two companies.

Q Now, during the course of your conversations with

Mr. Holton on Friday, and indeed on Monday, did he indicate whether or not hehad been speaking to Mr. Natelli about these problems?

A Yes.

Q And at any time in any of your discussions with Mr. Holton or anyone else concerning this problem in this letter, did anyone ever suggest to you that if the company--if Peat, Marwick and Mitchell were to go to the SEC, that Mr. Natelli was concerned that he might personally have some problem?

MR. VELIE: I object to what other people were speculating on.

THE COURT: Yes. To the extent I understand that question at all, I think it goes beyond the scope of what we agreed on.

MR. MARTIN: Let me try it one other way, your Honor.

Q Did anyone ever tell you that Mr. Natelli had expressed any concern he would personally have a problem if this matter was brought to the attention of the SEC?

MR. VELIE: Again, I object to what other people were talking about.

THE COURT: Yes, I think that's a fair objection and I will sustain it.

MR. MARTIN: I have no further questions.

MR. STILLMAN: No questions, your Honor.

xx CROSS EXAMINATION

BY MR. VELIE:

Q Good afternoon, Mr. Earl.

A Good afternoon.

Q Just so we are clear, the exhibit we have been working with, Natelli Exhibit K, is a letter thatyou dispatched on November 3, 1969, which was several days after the closing, is that correct?

A You mean Mr. Holton?

Q You and Mr. Holton.

A Yes.

Q This particular letter differs, does it not, from the information telephoned from Peat, Marwick on the day of the closing to the closing itself and at least in the two regards you told us about, is that correct?

A Well, the two paragraphs were added telephonically on that same Friday, as I recall.

Q Let me just see if you understood -- tell me, what is your best recollection and understanding.

This paragraph you read to the jury saying your intention is called to the fact that there would be a modest loss, $80,000 loss, a good sized loss, I guess, or a break

even at the end of the year. Was it your understanding that that information got to the participants at the closing or just got as far as Mr. Epley?

A No, it was my understanding it got to all the participants.

Q You were told it got to all the participants?

A Let me --

Q What is it?

A When you are either directly or indirectly dealing with a member of the bar and he leads you to believe that others are in the room and he is speaking for them, that's as far as you go. If in fact they weren't there, that just comes as a surprise to me.

It was my understanding that all participants were there. Mr. Epley was consulting with them and in turn he was talking to Messrs. Natelli or Holton who were calling in from Washington or New York. He understood Mr. Holton was calling me.

Q Mr. Holton told you that Mr. Epley told him, Holton, that Epley considered this a simple arithmetic computation of information already given and therefore it didn't need to be added?

A Essentially thats right. He said it was gratuitous.

Q The final paragraph thatyou added, I believe you have told us, this is the one you said you should resubmit the financial information. It was your clear understanding that that was not given to the parties because it got to them too late after the closing had occurred, is that correct?

A That's correct. We thought it was going to reach them before the closing but it didn't.

Q I take it as the general accountant of Peat, Marwick, Mitchell, faced with what you took to be an important situation, you did your best to gather all of the facts available on that weekend, is that correct, to see what it was that you should do and howyou should carry out your responsibility towards Peat, Marwick?

A Well, I certainly didn't conduct an investigation. I think I must have thought about it.

Q Did you do your best to make sure that the letter that was finally sent four days after the closing contained all of the relevant information available to you so that this letter itself would not be in some sense misleading? You wanted this to be a good accurate letter?

A I think it was sent three days after the closing.

I am not sure I follow you. Understand, I am a lawyer, not an accountant. When my people, that is, my clients, who are top accountants, tell me that X is the case,

I accept that without question.

Q You relied on them, is that correct?

A That's correct.

Q You relied on them for the information that went into this letter, is that correct?

A That's correct. Other than legal judgments reflected there.

Q Of course the information contained in this letter, which I think you said was material, is a total of about $800,000 of write offs, is that correct?

A Again, let me qualify. My people told me they felt it was material and I accepted that as an accounting judgment.

Q The number we are talking about which you are relying on them to say it was material was an $800,000 number, is that correct?

A We can total it up. I think you will find the separate paragraphs on -- paragraph 1B, 1, 2, and 3, there is a $500,000 item. That's for deferred costs. A $200,000 item which says receivables and a $84,000 item which talks about capital costs. So that's $784,000, is that right?

A Which page were you reading from of the comfort letter?

Q The last two pages of the comfort letter which is

is transmitted on November 3.

A I'm sorry, On B-1, your reference to 500,000. And then I see the references on -- it is my recollection that there was some change in these figures during the course of the day on -- this is information that was being gathered and it was -- they knew that magnitude was substantial. I'm not sure they were clear on the actual numbers until Monday or late Friday.

Q I take it then you didn't know in the course of preparing this letter for submission that it wasn't just $200,000 of receivables but an additional $1 million of receivables which had been written off during this very period, did you know that?

A I knew nothing about the background of this company.

MR. VELIE: I have no further questions.

THE COURT: Mr. Martin.

xx REDIRECT EXAMINATION

BY MR. MARTIN:

Q That letter does reflect -- relate to items that have direct impact on profit, isn't that correct?

They reduced the profit by $784,000?

A That was my understanding.

MR. MARTIN: No further questions.

THE COURT: Thank you, Mr. Earle. You may step down.

(Witness excused.)

MR. MARTIN: Your Honor, I think we have reached a point in the day where we might -- particularly given the holiday nature and the other problems we discussed with you, if we could adjourn for the day, we would appreciate it.

THE COURT: All right. Before we do, I owe the jury an answer on Friday, which I will need your collective help on. Would you comeup to the side bar so that I can respond to their inquiry.

If you will bear with us for a moment.

(At the side bar.)

(Discussion off the record.)

(In open court.)

THE COURT: Mr. Light and ladies and gentlemen, as best we can tell, we may finish the evidence on Thursday, which I think accords with something I said some days ago to you. We might, however, trickle over on the next day. Therefore, I'm going to ask you -- I have other cases on Friday morning which I can rearrange. Therefore I am going to ask you if you wouldn't mind coming in Friday morning only until 1 p.m. The cases I have on Friday afternoon would be very, very difficult and perhaps unfair to the litigants

and lawyers in those cases if I were to rearrange those. The same does not pertain, as I see it, to the cases in the morning. So if you don't mind to plan to sit on Friday morning with the hope that will expedite the conclusion of the case. Does that answer your question? You were very kind to come in today. It helped immeasurably. I thank and salute you all. I hope everything in the case joins me in that. It is a good time to quit on this gloomy election day. Have a good day in any even for the rest of the day and we will start again tomorrow morning at 10 o'clock.

Will counsel remain.

(Jury excused.)

(In open court, jury absent.)

THE COURT: As far as I am concerned, this will be in the robing room and off the record and will relate only to matters of an administrative nature, and need not be on the record.

(Adjourned to November 6, 1974 at 10 o'clock a.m.)

UNITED STATES OF AMERICA

vs. 74 Cr. 43

ANTHONY M. NATELLI and
JOSEPH SCANSAROLI,

November 6, 1974
10:00 a.m.

(Trial continued. In open court, jury [illegible]

THE COURT: Mr. Martin.

MR. MARTIN: Father Lennon, please.

R O B E R T T. L E N N O N, called as a witness by the defendant Natelli, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Father Lennon, would you try and keep your voice up. If you talk to the people in the back of the room that will probably be helpful.

Our usual first question is by whom are you employed, but I think we can skip that one, Father, and ask you rather, what is your present assignment.

A I am the Secretary for Priest Personnel in the Archdiocese of Newark.

Q How long have you been active in the Archdiocese in Newark?

A Twenty-four years.

Q During the course of those 24 years, did you come to know Tony Natelli?

A I did.

Q How did you first meet Tony Natelli?

A I was and am a chaplain in the New Jersey State National Guard and Anthony was enlisted during my time there and became an officer ultimately and I was associated with him in the National Guard at first.

Q When was that approximately that you met?

A Just about 20 years ago.

Q Since that time have you kept up your association with Mr. Natelli?

A Yes.

Q During that period have you had occasion to visit at the Natelli home?

A Frequently.

Q Have you had occasion to come to know other people who know Mr. Natelli?

A Yes.

Q During the course of the years that you have known Mr. Natelli and known others that have known him, have you had occasion to have conversations with other people who know Mr. Natelli so that you have come to know his reputation for

honesty, veracity, integrity?

A Yes, I have.

Q And what is that reputation, Father?

A He enjoys a very good reputation among people who know him, professionally, in the National Guard in years gone by, and his business associates, many of whom I met, when he was in Italy particularly, and some here in New York, and they all thought of him as a man of honesty and integrity.

MR. MARTIN: Thank you very much.

xx CROSS EXAMINATION

BY MR. VELIE:

Q Good morning, Father. Thank you for coming.

You haven't been with us before during the trial, have you?

A No.

Q I take it you haven't had occasion to hear the witnesses in this particular case who were on the very witness stand that you are sitting in now?

A No.

Q Have you had occasion to review the work papers that we are involved in working with here?

A No.

MR. VELIE: Thank you, sir.

MR. MARTIN: Thank you very much, Father. You may

step down.

THE WITNESS: Thank you; thank you, your Honor.

(Witness excused.)

MR. MARTIN: Warren Brecht.

W A R R E N F. B R E C H T, called as a witness on behalf of the defendant Natelli, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Brecht, by whom are you presently employed?

A The United States Government, the Department of the Treasury.

Q In what capacity are you employed by the Department of the Treasury?

A I am an Assistant Secretary, Assistant Secretary for Administration.

Q Assistant Secretary to the Treasury for Administration, is that correct?

A Right.

Q Was there a time, Mr. Brecht, that you were employed by Peat, Marwick, Mitchell and Company?

A Yes, sir.

Q When was that, sir?

A Well, it is a littlebit complicated. I came into Peat, Marwick through a merger of a firm originally called Management Systems Corporation back in 1965.

We operated as a semi-autonomous partnership under the name of Peat, Marwick, Livingston from '65 until July 1, 1969, at which time this consulting practice was merged into the management consulting department of Peat, Marwick, Mitchell.

So I was a principal -- actually a principal in Peat, Marwick, Mitchell from 1965 until July of 1971, at which time I resigned from the firm and went with the Government.

Q Will you tell the ladies and gentlemen of the jury, are you an accountant, sir?

A No, sir.

Q What is the difference between being a principal and a partner?

A A principal is a -- excuse me. Is this the jury?

Q This is the jury.

A Okay. A principal is a non-CPA partner in a public accounting firm. In order to be a general partner in a public accounting firm you have to be a certified public accountant.

I was in the management consulting side of the practice engaged in general business administration, which is my background, and I was not a CPA, and in order to recognize the equivalency within the partnership, I was a principal and I participated in the profits of the firm just as though I were a partner.

Q Thank you.

Did there come a time when you met Tony Natelli?

A Yes, sir.

Q When was that, sir?

A I suppose the first time must have been around 1967 or '68, whenever Mr. Natelli came down to the Washington office. It was along in then.

Q Did there come a time when you began to work more closely with Mr. Natelli?

A Yes. It was during the year 1969. I mentioned

a moment ago that the practice of Peat, Marwick, Livingston, of which I was the administrative partner -- I had responsibility for the internal operation of that practice -- was merged into Peat, Marwick, Mitchell effective July 1, 1969, and it was during the months, perhaps the three or four months preceding that and for the year or so after that that I worked quite closely with Mr. Natelli integrating the people, the practice itself, modifying the firm's internal accounting system so it could take care of the needs of our basically government consulting practice.

I was based in Boston during the first part of that period and then transferred to Peat, Marwick's executive office here in New York, but Ihad quite a bit of dealing with Mr. Natelli both by phone, by correspondence and actually traveling down to Washington intermittently.

Q Directing your attention to the period of June, July and August, do you know from your personal knowledge whether or not this activity that you had with Mr. Natelli involving the merger of the consulting group into the other practicein the Washington office took a substantial part of Mr. Natelli's time?

A Yes, it did. It was a fairly traumatic period, any time you are merging two practices together, with all the human relations aspects, the people being put together

into a new organization and abiding by perhaps a new set of internal rules and so on.

So this was a demanding period for Mr. Natelli and for the rest of us that were implementing the merger as well as carrying on our day-to-day activities.

Q Did you come to know during that period the type of hours that Mr. Natelli would be working?

A They were long, yes, sir.

Q Mr.Brecht, over the years that you have known Mr. Natelli have you known other people who knew him?

A Yes. There obviously are quite a few people that both Mr. Natelli and I ~~knew~~ know, both partners and others in the Peat, Marwick, Mitchell practice, as well as the Peat, Marwick, Livingston group that was merged in, and I know that the other people in Peat, Marwick, Livingston and I --

Q Mr.Brecht, let me tell you there are some limitations under the ~~rules~~ rules of evidence as to what you can testify to. So let me just ask you questions,sir.

During the course of the time that you have known Mr. Natelli and have known others that have known him have you had occasion to have discussions with people who knew Mr. Natelli from which youhave been able to learn

his reputation for honesty, veracity, integrity?

A Yes, I think -- I can say yes to that.

Q What is his reputation, sir?

A Well, it is excellent.

Q Thank you.

A He is a first-rate guy and I know those of us that were in the process of working with him to put this merged practice together found him to be a very open and candid individual and a real pleasure to work with.

In fact, we feel that the success of merging the practice was greatly facilitated by Mr. Natelli being where he was at that time.

MR. MARTIN: Thank you very much.

CROSS-EXAMINATION

BY MR. VELIE:

Q Mr.Brecht, good morning. You haven't been here with us throughout this trial, have you?

A No, I have not. I just came in late last night.

MR. VELIE: Thank you.

MR. MARTIN: Thank you, Mr. Brecht.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. MARTIN: Casper Harris.

C A S P E R L. H A R R I S, JR., called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Harris, by whom are you presently employed, sir?

A Howard University in Washington,D.C.

Q What is your present title at Howard University?

A I am the vice-president for business and fiscal affairs and treasurer of the University.

Q Do you also teach courses at Howard University?

A Yes, I do, in the Howard University School of Law.

Q What course do you teach?

A Federal income tax and legal accounting.

Q Dr. Harris, do you know Tony Natelli?

A Yes, I do.

Q Let me ask you this, sir. What is your educational background?

A I have a Bachelor of Science degree with a major in accounting and Doctor in jurisprudence.

Q Was there ever a time, Dr. Harris, when you

worked for Peat, Marwick, Mitchell & Company?

A Yes. I worked for Peat, Marwick, Mitchell in 1958 through 1972 as a staff accountant.

Q 1972?

A '62, sorry.

Q Does Peat, Marwick, Mitchell have any association with Howard University at present?

A Yes, they do. Peat, Marwick & Mitchell are the auditors for Howard University.

Q Would you tell the ladies and gentlement of the jury how you came to know Mr. Natelli?

A Yes. I know Mr. Natelli through his association as the partner in charge of the Washington office of Peat, Marwick, Mitchell. Howard is a client. Of course, I have met with Mr. Natelli on a number of occasions pertaining to the affairs of Howard University.

In addition to that my being an alumnus of Peat, Marwick, Mitchell, the Washington office from time to time has various gatherings and, of course I attend these and I have knownMr. Natelli through that association.

In addition thereto, I have also been familiar with Mr. Natelli by association in a professional organization such as the D.C.Institute of Certified Public Accountants.

Q Over the course of years that you have known Mr. Natelli, have you also met other people who knew Mr. Natelli?

A Oh, yes,a number of other certified public accountants and professionals in the field.

Q During the course of time that you have known Mr. Natelli, and known people who know Mr. Natelli, have you had occasion to have discussions with people who know Mr. Natelli from which you are able to learn his reputation for honesty, veracity and integrity?

A Yes, I have.

Q Could you tell us what his reputation is for those characteristics?

A Excellent among his colleagues and the people I have talked to.

MR. MARTIN: Thank you. I think Mr. Stillman may have some questions.

CROSS-EXAMINATION

BY MR. STILLMAN:

Q Mr. Harris, do you know Joseph Scansaroli?

A Yes,I do.

Q How do you know him?

A I know Mr.SCansaroli through his association with Peat, Marwick & Mitchell. At the various meetings

that I have attended, again being an alumnus of Peat, Marwick, I have met Mr.Scansaroli and I also know him through professional organizations within the metropolitan D. C. area.

Q Did you know him at all through any of the work that he did during the audit work on Howard University?

A Not really because during that period of time I was the internal auditor at Howard and I did not have occasion to really work with him as he did the audit.

Q Do you know other people who know him, sir?

A Oh,yes.

Q In the course of your conversations with these other people, have you come to an opinion with respect to Mr.Scansaroli's reputation for honesty and integrity, truth and veracity?

A Yes, I have.

Q What is his reputation?

A Excellent.

MR. STILLMAN: Thank you very much, sir.

CROSS-EXAMINATION

BY MR. VELIE:

Q Mr. Harris, thank you for coming up to our trial this morning.

You haven't been here before, have you?

A No, I have not.

Q You haven't heard any of the proofs or examined the documents in the case?

A No.

MR. VELIE: Thank you.

THE COURT: Thank you, sir.

You may be excused.

(Witness excused.)

MR. STILLMAN: Mr. Persio.

D I N O P E R S I O, called as a witness by the defendant Scansaroli, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. STILLMAN:

Q Mr. Persio, what is your occupation, sir?

A I am an attorney.

Q Where do you practice?

A I practice in Ebensburg, Pennsylvania.

Q Where is that?

A That's in Western Pennsylvania, located about 20 miles from Johnstown, Pennsylvania.

Q Where did you go to law school, sir?

A I went to law school at the University of Pittsburgh.

Q How long have you been practicing?

A I have been practicing since 1958.

Q Do you know John Scansaroli?

A Yes, I do.

Q How did you come to know him?

A I came to know Joe as a client of his. He represents my interests in accounting method.

Q Does he represent or do any accounting work for

any other lawyers with whom you are associated?

A Yes, I am associated with two other attorneys for whom Mr. Scansaroli does the accounting work.

Q How long has he been doing accounting work for you, sir?

A He has been doing accounting work for me since 1971.

Q Do you know other people in the community who also know Joseph Scansaroli?

A Yes, I do.

Mr. Scansaroli and I represent mutual clients, I from the accounting -- I from the attorney's standpoint and he from the accounting standpoint. I also know other people who know him.

Q How big is Ebensburg, by the way?

A Approximately 5,000 people.

Q Have you had occasion in the course of your conversation with these other people who know Joseph Scansaroli to come to a conclusion as to his reputation in your community for honesty and integrity, truth and veracity?

A Yes, I have.

Q What is that reputation, sir?

A It has been absolutely excellent.

Q You are aware of course, that Joseph Scansaroli stands indicted on a charge which is being tried in this

courtroom.

A Yes, I do.

Q Do other people in the community know of that fact?

A Yes, they do.

Q Has that fact in any way changed his reputation for honesty and integrity, truth and veracity?

A It has not.

MR. VELIE: Your Honor, if further questions of that type are going to be asked, I ask they not be rushed out while I'm objecting.

MR. STILLMAN: Sorry. I certainly didn't intend to do that.

Thank you, Mr. Persio.

xx CROSS EXAMINATION

BY MR. VELIE:

Q Good morning, Mr. Persio. Thank you for coming up to our trial. I take it you haven't attended up to now, have you?

A No.

Q So you haven't heard the witnesses or seen the proof in this particular case?

A No, I came in last night.

MR. VELIE: Thank you, sir.

THE COURT: Thank you. You may be excused.